

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

* * * * *

NEIL GAIMAN, MARVELS &
MIRACLES LLC,

Plaintiffs,

-vs-

Case No. 02-CV-48-BBC

TODD MCFARLANE, TODD MCFARLANE
PRODUCTIONS, TMP INTERNATIONAL
and IMAGE COMICS,

Madison, Wisconsin
June 14, 2010
9:00 a.m.

Defendants.

* * * * *

STENOGRAPHIC TRANSCRIPT OF MOTION HEARING
HELD BEFORE JUDGE BARBARA B. CRABB,

APPEARANCES:

For the Plaintiff: Foley & Lardner
BY: ATTORNEYS ALLEN ARNTSEN
and JEFF SIMMONS
150 East Gilman Street
Madison, Wisconsin 53703
Kenneth Levin & Associates
BY: ATTORNEY KENNETH LEVIN
20 North Wacker Drive, Ste. 2200
Chicago, Illinois 60606

For the Defendant: Bryan Cave LLP
BY: ATTORNEY J. ALEX GRIMSLEY
Two North Central Ave., Ste. 2000
Phoenix, Arizona 85004-4406
Godfrey & Kahn
BY: ATTORNEY TODD SMITH
One East Main Street
Madison, Wisconsin 53703

Lynette Swenson, RMR, CRR, CBC
Federal Court Reporter
U.S. District Court 120 N. Henry St., Rm. 520
Madison, WI 53703 (608) 255-3821

I-N-D-E-XPLAINTIFF'S WITNESSES

NEIL GAIMAN	Direct by Mr. Arntsen	11-49
	Cross by Mr. Grimsley	49-112

E-X-H-I-B-I-T-SPLAINTIFF'S EXHIBITSIDENTIFIEDRECEIVED

Exhibit 1	Spawn 9	14	---
6	Spawn 32	39	---
8	Spawn 44	34	---
9	Spawn 45	34	---
10	Spawn 46	35	---
11	Spawn 97	24	---
12	Spawn 98	27	---
13	Spawn 99	29	---
14	Spawn 100	30	---
16	Spawn Bible	32	---
17	Angela close-up	18	---
18	Angela 2	22	---
19	Angela 3	22	---
22	Spawn the Dark Ages 1	41	---
23	Spawn Dark Ages 2	41	---
24	Spawn Dark Ages 3	42	---
25	Spawn Dark Ages	43	---
26	Spawn Dark Ages 15	43	---
27	Spawn Dark Ages 22	45	---
28	Comic	37	---
31	Document - Toy	47	---
32	Spawn website	40	---
33	Document Dark Ages	49	---
34	Domina description	30	---
35	Spawn website	36	---
37	Spawn 8	59	---
38	Previews	98	---
42	Lord Covenant-toy	112	---
43	Toy	75	---
44	Spawn Dark Ages 5	45	---
47	Spawn Dark Ages 8	46	---

1 (Call to order)

2 THE CLERK: Case Number 02-CV-48-BBC. Neil
3 Gaiman versus Todd McFarlane is called for a motion
4 hearing. May we have the appearances, please.

5 MR. ARNTSEN: Plaintiff is here by Allen
6 Arnteson and Jeff Simmons and Ken Levine, and Neil
7 Gaiman is here personally.

8 THE COURT: Thank you. And I'd like to remind
9 everybody to stay seated. We have streaming audio in
10 the courthouse and there may be other people that want
11 to hear what's going on.

12 MR. ARNTSEN: Your Honor --

13 THE COURT: Yes.

14 MR. ARNTSEN: -- how will -- will that work for
15 questioning from the ELMO? Because we need to question
16 from the ELMO. How will that work? This is all visual.

17 THE COURT: We'll just move one of the mics
18 over to that lectern.

19 MR. GRIMSLEY: Morning, Your Honor. Alex
20 Grimsley on behalf of Defendants Todd McFarlane and Todd
21 McFarlane Productions. Todd Smith is here as well, and
22 Mr. McFarlane is here on my left.

23 THE COURT: Thank you. How do you want to
24 proceed this morning? Mr. Arntsen, do you want to make
25 some sort of opening statement and then call witnesses

1 or how do you --

2 MR. ARNTSEN: Yes. Our thought was make a very
3 brief opening and then we'd call Mr. Gaiman. He's our
4 only witness. And then -- first of all, we have an
5 agreement with the defendant that the comic books
6 published by defendants and images from their website
7 are authentic. We don't need to worry about
8 authenticating them. They are admissible.

9 THE COURT: Okay.

10 MR. GRIMSLEY: I have no issues with
11 authenticity, Your Honor. There may be some relevance,
12 but in this sort of hearing I suspect that's not a
13 reason to not have something admitted.

14 THE COURT: One of the reasons I wanted to have
15 an evidentiary hearing is I want to see these images in
16 a form that I can -- I couldn't even read a lot of the
17 writing on some of them much less distinguish one figure
18 from another or from the background. But I take it you
19 have the color versions, actual versions?

20 MR. ARNTSEN: What we have -- we have the color
21 versions, and what those will be -- those will be -- at
22 least as far as the original exhibits which we premarked
23 and then we'll examine the witness from the ELMO,
24 because again, it's all visual. But then the exhibits
25 will be left here with you with the numbers on them.

1 THE COURT: Fine. Wonderful.

2 MR. ARNTSEN: And at the close of the hearing
3 if we need to adjust that, just let us know.

4 THE COURT: Okay. Mr. Grimsley, do you want to
5 make some sort of opening statement now or do you want
6 to wait until Mr. Arntsen is finished?

7 MR. GRIMSLEY: I'm happy to make a very short
8 opening statement so you know where we're all headed
9 today.

10 THE COURT: Okay. Then Mr. Arntsen, you may
11 proceed.

12 MR. ARNTSEN: Actually Mr. Simmons is going to
13 make our opening.

14 THE COURT: Oh. Mr. Simmons.

15 MR. SIMMONS: Thank you, Your Honor. Just very
16 briefly, I think our position is set out pretty well in
17 the briefs. But what you'll see when you look at the
18 exhibits today, there are three main things, three or
19 four main things that courts typically look at when
20 they're trying to determine whether a character is
21 derivative or whether it's infringing, which is the flip
22 side to the same issue. If it's a derivative character,
23 it would be an infringing character if somebody else,
24 somebody who was not authorized to use it used that
25 character. And the things courts typically look at are

1 kind of the back story of the character, you know, what
2 their personal history is, their personal traits.

3 In the case of comic book characters, we look at
4 the superpowers, the powers that the characters have.
5 And they also look at the costume that the character
6 typically wears or the various costumes that they wear.
7 And then finally in some cases, as you noted in the
8 Seventh Circuit opinion in this case, Judge Posner
9 particularly said with regard to the Medieval Spawn
10 character, you look at the way the character speaks.
11 Judge Posner said if he talks medieval and he looks
12 medieval, then he infringes Medieval Spawn.

13 So that's what you'll see in the exhibits that
14 we're demonstrating today. And while there will be some
15 variation in the way the characters are portrayed in
16 particular issues, I think what you'll see is there is a
17 core set of character traits that's kind of present
18 consistently throughout. You always expect characters
19 to change somewhat from issue to issue, but still there
20 will be some very basic traits that remain the same
21 throughout.

22 And then just one other issue is in the briefs,
23 there's a discussion of ideas versus expression, and the
24 argument on the plaintiff's side -- excuse me, on the
25 defendant's side is that well, these are just ideas.

1 They're not actually expressions. They're not
2 copyrightable expressions. And that's simply not the
3 case here. You'll see that in the exhibits, but you
4 also, in some of the cases we cited, you'll see a
5 discussion of ideas. Everything can be characterized as
6 an idea on some level. And if you go about
7 characterizing everything as ideas, then basically
8 characters themselves would never be copyrightable
9 because you wouldn't be looking at the actual way the
10 characters are expressed. So you'll see the concrete
11 expression of what have been described as just merely
12 ideas by the defendants. They're more than that, they
13 are the actual expression. That's all.

14 THE COURT: Okay. Thank you. Mr. Grimsley.

15 MR. GRIMSLEY: Thank you, Your Honor. As an
16 initial matter, I'd be remiss if I did not reassert our
17 position that we believe the topic of today's hearing
18 was more appropriate for jury trial. I don't want there
19 to be any doubt on the record that by proceeding today,
20 we're not waiving --

21 THE COURT: I understand that.

22 MR. GRIMSLEY: -- that argument. Thank you.
23 And we understand you've already ruled. Today we do
24 have some conflict between idea and expression of the
25 idea.

1 Mr. Gaiman, together with Mr. McFarlane, as was
2 found in the prior trial, co-created two characters that
3 are going to be talked about today, Medieval Spawn and
4 Angela. Medieval Spawn, I think there will be no
5 question, is actually derivative itself of the character
6 that Mr. McFarlane had already created called Spawn.
7 The law is clear that when there's a copyright on a
8 derivative character, the extent of the copyright on the
9 derivative character is limited. It's limited to the
10 additional elements that were added.

11 With respect to Medieval Spawn, this means whatever
12 Mr. Gaiman co-owns is limited to those aspects of that
13 character which are different, addition, modifications
14 to the original Spawn character.

15 I think we will find today that the similarities
16 that are going to be pointed out to you between the
17 character that came to be known as Medieval Spawn and
18 the character that Mr. Brian Holguin created called Dark
19 Ages Spawn, those similarities in the main relate to two
20 categories: One, elements that are taken from the
21 preexisting Spawn, in which case you can't say that it's
22 derivative of Medieval Spawn. The second are elements
23 that would be present simply by the fact of having one
24 of these Hellspawn creations exist in medieval times.
25 The easiest example, for instance, is to say they both

1 ride a horse. Well, of course if they're in medieval
2 times they both ride a horse. That was the means of
3 transportation. Stock character elements are another
4 thing that cannot constitute part of that copyright.

5 When we get to Angela, the evidence will show that
6 there are also elements of Angela that are actually
7 derived from the original Spawn character. While the
8 characters obviously appear quite differently, there are
9 elements in the design of Angela that are designed from
10 the Spawn character. There are other elements of
11 Angela, the female warrior, that are somewhat just
12 generic to the comic industry, and in this respect you
13 could go all the way back to Wonder Woman to see many of
14 those elements.

15 So at the end of the day, by the time we consider
16 what are stock elements and what elements are derived
17 from Spawn, the similarities between the characters here
18 are not sufficient to say that they are derivative of
19 those characters. To do so -- and this is why we say
20 they're trying to protect the idea -- if the
21 characteristics between the other two angel characters
22 let's say, Tiffany and Domina, and their similarities to
23 Angela are sufficient to say that those are derivative
24 characters, essentially what Mr. Gaiman would be
25 successful in arguing is that he has a copyright on the

1 idea of the female warrior angel. And if Dark Ages
2 Spawn is found sufficient to be derivative of Medieval
3 Spawn and Mr. Gaiman is going to say the creative work
4 that Mr. Holguin did was nothing more than copying his
5 work, essentially Mr. Gaiman is saying I have a
6 copyright on the idea of a Hellspawn from medieval
7 times. The law is clear that those ideas cannot be the
8 subject of the copyright, only the actual expression of
9 those ideas.

10 And I agree with Mr. Simmons, when we consider the
11 back story, the powers, the costume and the manner of
12 speech, when we consider all of those elements with
13 those characters, you will see just how different they
14 are.

15 THE COURT: Thank you. Mr. Arntsen, you can
16 call your first and only witness.

17 MR. ARNTSEN: Plaintiff calls Neil Gaiman.

18 **NEIL GAIMAN, PLAINTIFF'S WITNESS, SWORN,**

19 MR. ARNTSEN: If don't mind, right from the
20 start I'll put the mic up there for some of the
21 introductory questions.

22 THE CLERK: I think the one on the left is the
23 one with the longer cord. I was just looking at that.

24 THE COURT: You're sort of the guinea pigs.
25 This is the first time I have used this courtroom with

1 the equipment. Actually first time for any kind of
2 trial procedure. So we're figuring out how it's going
3 to work. We need some refinement.

4 DIRECT EXAMINATION

5 BY MR. ARNTSEN:

6 Q Can you please state your name.

7 A Neil Gaiman.

8 Q Where do you live, Neil?

9 A Menomonee, Wisconsin.

10 Q Can you just briefly summarize your professional
11 career.

12 A I'm a writer. I've written comics, adult novels.
13 Since the court case began, I've also started writing
14 children's books. I've won the Eisner Award and so
15 forth for comics, the Hugo Award and Nebula, and awards
16 like that, for adult novels and most recently the
17 Newbery Award for writing my last children's book.

18 THE COURT: And which one was that?

19 THE WITNESS: That was for The Graveyard Book.
20 That's the children's book award. And also had several
21 films made of -- more recently of books that I've
22 written, the most fun of which was probably Coraline,
23 again a children's book, which was nominated for an
24 Oscar.

25 BY MR. ARNTSEN:

NEIL GAIMAN - DIRECT

1 Q Thank you. Turning to right away the topic at
2 hand, can you briefly describe for the Court how you
3 went about creating the characters Medieval Spawn and
4 Angela?

5 A Sure. Todd had called me and asked me to write an
6 issue of Spawn back in the early days because the way he
7 explained it was the people at Image Comics, the comic
8 company, were artists and they were getting a lot of
9 flack for writing and he wanted celebrity writers and he
10 got me, Alan Moore, Frank Miller, and a guy called Dave
11 Sim -- and Alan, Frank and I were the top writers in
12 comics at the time -- to write guest issues.

13 THE COURT: And when would this have been?

14 THE WITNESS: This was in '91/'92. I moved to
15 America in '92, so it would have been '92. And the
16 comic, I think, came out in April '93.

17 MR. ARNTSEN: Your Honor, just since we've all,
18 you know, gone through a trial with this, any time, you
19 know -- I'll be kind of rushing through, but any time
20 you want additional --

21 THE COURT: That's fine. Thank you.

22 THE WITNESS: Todd had asked -- had told me
23 that I could write anything that I wanted. He said I
24 had complete cart blanch. If I wanted to do 23 pages of
25 Spawn reading a newspaper, I could. And I think Todd

NEIL GAIMAN - DIRECT

1 was up to about Issue 4 or 5 of Spawn at that point.
2 And I looked at the comics and started thinking about
3 the idea of Spawn, this warrior of Hell, a guy brought
4 back from the dead to become -- to fight on the devil's
5 side, and I thought well, if you're a warrior of Hell,
6 you've got to be fighting something and --

7 THE COURT: The Spawn was already in the first
8 issues?

9 THE WITNESS: Spawn was already in the first
10 comic. It was called Spawn. It was about Spawn. It
11 was written and drawn by Todd. And in it, there's a guy
12 call Al Simmons who has died. He's brought back from
13 the dead by a character who is fundamentally the devil
14 and given superpowers and told that he is a warrior for
15 Hell. And I thought well, if you're a warrior for Hell,
16 then you've got to be fighting something. So fighting
17 Heaven seemed to make sense. And I thought if you're
18 warriors, you can't have nice angels because you have to
19 have somebody to fight, so therefore they have to be
20 warrior angels. And thought why not make it a female
21 character.

22 So I called Todd and said okay, this is the idea:
23 Female character, angel, talked him through it a little
24 bit; and also asked Todd could there have been previous
25 Spawns, because you haven't actually seen any previous

NEIL GAIMAN - DIRECT

1 Spawns at that time. And he said he didn't see why not,
2 as long as there weren't a lot of them. You couldn't
3 have one every few years, they had to come along every
4 hundred years or so. Because I thought well, the best
5 way to introduce a character who is going to fight Spawn
6 is to actually show her killing a previous one of his
7 predecessors which establishes that she's the kind of
8 person who does that kind of thing, kills Spawns.

9 So Todd was in agreement. He -- you then -- and
10 the way the comics business works, you have to do a
11 solicitation and you had to have the cover of the comic
12 ready before the comic was written and drawn. So Todd
13 then drew the cover to Spawn 9.

14 Q Showing you what's been marked, previously marked
15 Exhibit 1, I'll just show the exhibit sticker, but is
16 that that cover?

17 A Yeah.

18 Q And tell the Court essentially what the cover shows
19 in terms of the characters you co-created.

20 A Well, it shows the wreckage of some knight in
21 armor, medieval times, Spawn costume, and a rather
22 scantily clad young lady holding -- with a huge sword, a
23 spear of some kind, and lots of ribbons, with ornamental
24 headgear.

25 THE COURT: Just out of curiosity, when you say
NEIL GAIMAN - DIRECT

1 you have to have a solicitation in the form of a cover,
2 what's the purpose of that?

3 THE WITNESS: You're asking the comic shops --
4 essentially you have a network of comic stores across
5 the world and they are ordering things in
6 comic-by-comic. So you're letting -- at that point
7 there were a lot of them. The comic distributors have
8 advance information about your comic that they can then
9 get out so the stores will order from them months in
10 advance.

11 THE COURT: I see.

12 THE WITNESS: So before the comic was written
13 or drawn, a -- I had to give Todd a little precis of
14 what it would be, and he drew that cover, which wasn't
15 exactly what I had in mind for the character, but I
16 thought when we were talking angels, we were probably
17 talking something with more clothes. But I thought
18 great, that's what we're given and that's kind of fun;
19 and so took the elements that Todd had created in there,
20 the spear that he'd drawn, I thought great, I'll play
21 with that. So that was really -- that was the first
22 image.

23 I'd come up with the idea of a character, she was
24 going to be called Angela, and I did a little precis and
25 a description for Todd of what was going to happen. He

NEIL GAIMAN - DIRECT

1 drew that image. I then took that image and made that
2 the character that I was writing when I wrote the comic.

3 Q And did you write the entire TF Spawn 9?

4 A Yes.

5 Q And prior to Spawn 9, were you aware of any other
6 characters like Angela or the angelic army that you were
7 creating for Spawn?

8 A There definitely hadn't been an army, as far as I
9 know anyway, I have not read anything, an army of female
10 kick-ass warrior angels, lady angels who were also --
11 who were hunters and merciless and not terribly nice.
12 Because I thought if Spawn and Co. are fighting these
13 guys, then the other side needed to be almost as bad.
14 So I made her a -- making Angela a hunter, for example,
15 the idea of somebody who just hunts these things and she
16 has their heads on her wall. No, nothing like that.

17 Q When you came up with Angela, was she sort of a
18 unique loner character or was she part of a -- of her
19 own sort of world that existed within the Spawn world?

20 A In my head there were lots of them. I didn't
21 actually get to do the lots of them until I got to do
22 the Angela comic about three years later.

23 Q Now I'm going to turn your attention to Medieval
24 Spawn, and showing you what is on the screen now --

25 MR. GRIMSLEY: Your Honor, if I may interrupt
NEIL GAIMAN - DIRECT

1 for just a moment. Allen, for the record, the images
2 that are being shown are from what I believe is going to
3 be identified as Exhibit 1?

4 MR. ARNTSEN: Right.

5 THE COURT: Thank you.

6 BY MR. ARNTSEN:

7 Q So showing you the image on the screen, which is
8 from Exhibit 1, can you describe that for the Court in
9 the context of again your role in this creation?

10 A Sure. The idea was that there would have been a
11 Spawn, who was a knight in armor, and I had him
12 essentially show up. I didn't have that many pages, it
13 was one issue, so I came up with the idea of a Spawn who
14 was a knight in armor. He shows up on his finely
15 comparisond horse. He has a shield, a sword, and a
16 version of the Spawn costume that's essentially armor or
17 something closer to what a knight in armor might wear or
18 what a medieval knight would have wore. He shows up.
19 Would you like me to describe this or talk more about
20 the character?

21 Q Yeah. I guess both. Talk more about the character
22 in the context --

23 A Okay.

24 Q -- of the expression that's there in front of us.

25 A I mean as I said, I didn't have that much to do
NEIL GAIMAN - DIRECT

1 with him. I created a little back story for him, the
2 idea that he had been tricked by a devil; that his
3 sister who he loved had -- he returned from the dead to
4 find that she had married his greatest enemy, somebody
5 he hated, but he was still trying to be noble and
6 knightly. And then he gets -- he believes that he is
7 rescuing a damsel in distress who then transforms into
8 Angela and kills him.

9 Q So after Spawn 9, what was the next comic you wrote
10 for Mr. McFarlane?

11 A I wrote a three-part series called Angela and also
12 wrote three pages of Spawn 26 before that came out,
13 which was just a little setup for Angela by the way it's
14 shown. The Spawn character met another angel called, I
15 think, Gabrielle. And then I did Angela a few years
16 later because my son was twelve and he discovered the
17 Spawn toys and things and wanted me to do something that
18 he'd like, because most of the stuff I wrote was for
19 adults in comics. So I wrote the Angela comic.

20 Q Showing you what's marked as Exhibit 17. It's on
21 the screen in front of you. Can you tell us what that
22 is?

23 A That is a closeup drawn by a wonderful artist
24 called named Greg Capullo who did a lot of stuff for
25 Todd called Angela, all splattery and bloody with her

NEIL GAIMAN - DIRECT

1 big earrings.

2 THE COURT: Mr. Gaiman, I'm sorry. Was this
3 suppose to be the first issue of the series?

4 THE WITNESS: This was the first, but we did a
5 three-issues series. It wasn't something that was meant
6 to go forever. It was what's called a mini series or a
7 limited series. This was number one of three. It was a
8 story with a beginning, a middle, and an end.

9 BY MR. ARNTSEN:

10 Q And so in connection with your writing the Angela
11 series, did it give you an opportunity to expand on
12 Angela's world?

13 A Sure. That was the part of the fun of it was
14 creating this sort of huge back story. Lots -- the idea
15 -- in the first Spawn I think you discover that she's
16 100,000 years old. You may actually have discovered
17 that in Angela. And there's, you know, an angelic host,
18 there's 330,000 of these beautiful warrior angels and
19 they're arresting her. She's in trouble right at the
20 beginning.

21 Q And I'm just putting up on the screen some of the
22 images from Angela. But was part of what you were doing
23 in Angela again essentially creating the world which
24 she --

25 A She --

NEIL GAIMAN - DIRECT

1 Q Sorry. Go ahead.

2 A Part of the fun for me was creating ideas. If
3 you're writing comics, what you always want to do is
4 leave the ground more fertile than when you were there.
5 You want to leave more stuff for people who are going to
6 be writing ongoing series to play with, which is why it
7 was fun for me giving Todd, for example, the idea that
8 there had been lots of Spawns. It was something that
9 left him with more than had been before.

10 So with this, I created a heavenly city called
11 Elysium. I created 300,000 warrior angels who all look
12 like exotic dancers, and named, you know, named a few of
13 them. And they all looked different. They all have
14 certain very specific similarities that, you know, the
15 masky thing around the eyes, for example. The fact that
16 they are part of this order of kick-ass lady warrior
17 angels.

18 THE COURT: And when was this?

19 THE WITNESS: This was '95/'96.

20 THE COURT: And did any of the angels in this
21 series, were any of them Domina or Tiffany?

22 THE WITNESS: No.

23 BY MR. ARNTSEN:

24 Q Do you recall the names of some of the angels that
25 you specifically named?

NEIL GAIMAN - DIRECT

1 A Gabrielle, Soriel, Anahita, Quan Yin. I basically
2 just took names of angels or gods or goddesses -- or
3 goddesses specifically from different cultures and gave
4 them to the ladies. So in the same way that Angela was
5 fundamentally a joke name, it was also a very serious
6 name. It's angel. It's a name with angel in it. So I
7 got a certain move-on from there.

8 Q And then can you describe the rest of the Angela
9 series, essentially what happens there?

10 A Essentially it's been a long time and I haven't
11 re-read it, but she gets arrested for being a traitor,
12 for having hunted Spawn without a license, even though
13 she said she did have a license. They go and get Spawn,
14 the angels go and get Spawn to come and be a witness at
15 her trial. She realizes she is being set up. She and
16 Spawn escape from Heaven to Hell and have an awful lot
17 of shouting, fighting, hitting and running around. And
18 then the fact that she was set up, she essentially gets
19 a confession out of Gabrielle, the lady who set her up,
20 and Gabrielle gets arrested.

21 Angela is given a pardon or exonerated but decides
22 that she doesn't want to be working for Heaven anymore,
23 she wants to go freelance, and ended with her going
24 freelance.

25 BY MR. ARNTSEN:

NEIL GAIMAN - DIRECT

1 Q And what did going freelance mean?

2 A Not actually directly taking orders from anybody
3 else, she was just going to be out there on her own to
4 -- kick-ass angel for hire.

5 Q Turning back to Medieval Spawn for a minute,
6 when -- specifically what period of time was Medieval
7 Spawn set in?

8 A When I wrote it, it says 800 years ago, so some
9 time in the 12th century.

10 Q Now the issue here that we're here to talk about --

11 MR. ARNTSEN: Your Honor, if it's okay --
12 actually I'll just put this up here so that he's talking
13 about an exhibit that we'll put in front of you.

14 Q I'll show you what's been marked Exhibit 19. Can
15 you identify what that is?

16 A That's Angela Number 3.

17 Q And again just for authentication purposes, show
18 you what's been marked Exhibit 18. Can you identify
19 what that is?

20 A That is the cover of Angela Number 2 and it's got
21 Angela and Spawn on it.

22 Q I guess I'll represent to you you just saw the
23 cover. What the exhibit is is the entire comic.

24 A I absolutely believe you.

25 Q Now we're here today to talk about derivative
NEIL GAIMAN - DIRECT

1 characters. Can you -- have you been involved in
2 writing comic series where -- that have extended over a
3 period of time?

4 A Yes, very much so.

5 Q Can you give the Court some examples?

6 A Well, the most famous one would be Sandman, which
7 was a comic that I wrote that ran 75 issues. It's now
8 collected in ten volumes of paperbacks and also four big
9 hardbacks. And that was a comic I did for DC Comics,
10 who were the publishers most famously of Batman and
11 Superman. And from the mid 80s to the mid 90s. And in
12 it, I created a lot of characters and I also used some
13 DC Comics characters and there were also some characters
14 who were deemed derivative by DC Comics. When they
15 worked up my royalty on them, some merchandising or some
16 spinoffs happened.

17 Q And so over the course of a comic series, do
18 characters evolve?

19 A Oh, sure. You don't -- characters change and
20 character costumes change. And Batman -- the Batman of
21 now does not wear the costume of the Batman of 1939;
22 ditto Superman, ditto Wonder Woman. You don't -- you
23 know, in the case of Sandman, Morpheus, my character in
24 Sandman, he dresses in lots of different ways, always
25 chiefly wearing black and having, you know, longish

NEIL GAIMAN - DIRECT

1 coats or cloaks. But always -- it's obviously the same
2 character, it's obviously the same person, but you get
3 different artists and they draw things differently. You
4 decide to try things a different way.

5 Q Now I'm going to show you what's been marked
6 Exhibit 11 and ask if you can identify what that is. I
7 will put it up here.

8 A It looks like an Angela.

9 Q And do you recognize it as the cover of Spawn 97?

10 A Yeah, I saw the 97 on there. I couldn't have --
11 had you put it in front of me, I would have said it's a
12 Spawn. But yes, it's 97. Yes, it says 97 on it.

13 Q And first of all, did you have any direct
14 involvement in -- I'm going to be asking you some
15 questions about Spawn 97 to 100.

16 A Um-hmm.

17 Q First of all, are you generally familiar with what
18 the story line is in those comics?

19 A I read them back when we went to preparing for the
20 original trial in 2002 and flipped through them
21 yesterday morning.

22 Q And is Angela a featured character in those?

23 A Oh, yes. She is the -- she's -- it's the big
24 apocalyptic showdown and Angela dies in it. That's the
25 big event issue, is in Spawn 100 he kills her, and that
NEIL GAIMAN - DIRECT

1 had already been announced. So this is the three issue
2 Angela dies.

3 Q And does the angelic army that you came up with in
4 your Angela series, does that appear in Spawn 97?

5 A Yes.

6 THE COURT: When would this have come out?

7 MR. ARNTSEN: Your Honor, the copyright notice
8 is July -- my eyesight, July 2000 --

9 THE COURT: That's the kind of problem I was
10 having trying to look at the exhibits.

11 MR. ARNTSEN: It's July 2000 something or
12 other. I just can't quite tell the last digit.

13 THE COURT: Okay.

14 MR. ARNTSEN: May be able to tell from --

15 THE COURT: That was available during the trial
16 in 2002?

17 THE WITNESS: Yes.

18 MR. ARNTSEN: Yeah.

19 THE COURT: All right.

20 MR. ARNTSEN: 2000, 2001 or 2002. And again,
21 perhaps on another one I'll be able to -- it is
22 discernible by somebody with better eyesight than me.

23 BY MR. ARNTSEN:

24 Q I'll show you a page of Exhibit 97 and can you
25 identify -- can you identify members of your angelic
NEIL GAIMAN - DIRECT

1 army there?

2 A Yes.

3 Q And where are they shown?

4 A You've got one of them in the top three panels and
5 then you have a bunch of them in the bottom panel.

6 Q And --

7 THE COURT: Those are all supposed to be the
8 army? Nothing else? I mean no Spawn or anything in the
9 picture?

10 THE WITNESS: Can't see one.

11 THE COURT: Okay.

12 BY MR. ARNTSEN:

13 Q And then again just turning to the next page,
14 what's shown there?

15 A More of the angels.

16 Q And then I'll turn a couple pages later and does
17 Domina appear there?

18 A You know, I am very bad at telling them apart,
19 but --

20 Q Actually, you see where my finger is pointed?

21 A Yeah. It certainly says Domina and she's saying
22 yeah. But yes, that would be the one; again, one of the
23 angels.

24 Q And then I will show you --

25 MR. ARNTSEN: Actually here I can see it
NEIL GAIMAN - DIRECT

1 better. Looks like it's 2000, the copyright, Your
2 Honor. This one is a little clearer.

3 THE COURT: Thank you.

4 Q I will show you another document marked Exhibit 12.
5 Do you recognize that as Spawn 98?

6 A I do.

7 Q And I'll just turn to one of the pages there. Is
8 Domina shown on that page?

9 A Yeah.

10 THE COURT: In the upper left?

11 MR. ARNTSEN: Excuse me, Your Honor?

12 THE WITNESS: Yeah, upper left and then from
13 behind on the bottom.

14 Q If you look at the top right bubble, it mentions
15 her?

16 A The bubbles really aren't legible on this.

17 THE COURT: Right.

18 MR. ARNTSEN: Oh. I wonder if focusing --
19 should I try focusing?

20 THE WITNESS: If you can read it and we can't,
21 then focusing --

22 MR. ARNTSEN: Doesn't look like it.

23 THE COURT: No, it doesn't seem to make any
24 difference.

25 THE WITNESS: No.
NEIL GAIMAN - DIRECT

1 MR. ARNTSEN: But again, the Court will have
2 these exhibits.

3 BY MR. ARNTSEN:

4 Q And then showing again another page of Exhibit 12,
5 what does that show?

6 A Looks like a bunch of angels and Angela.

7 Q And I don't know if you can read where my finger is
8 pointed. Can you see Domina mentioned there or is it
9 just not legible?

10 A No, it's not legible.

11 MR. MCFARLANE: Mr. Arntsen, sometimes on those
12 machines if you take the exposure down on that light,
13 sometimes you can bring the light level down and that
14 might help. On that machine is there a way to dull the
15 light on that? It might make it easier to read. On the
16 overhead projector.

17 THE COURT: Before it looked like you were just
18 bringing it in and I think there's a separate focusing.

19 MR. ARNTSEN: I've got a zoom and a focus.

20 MR. MCFARLANE: Oh, there's not an exposure
21 button?

22 MR. ARNTSEN: Lamps just have on and off.
23 Doesn't look like it.

24 THE COURT: That's okay. We'll just assume
25 you're telling the truth.

NEIL GAIMAN - DIRECT

1 MR. ARNTSEN: The exhibits will be here.

2 BY MR. ARNTSEN:

3 Q And then again, one more photo from --

4 A More of the 330,000 warrior angels.

5 Q And is Angela shown on that page also?

6 A I think that's her from behind because she's got
7 the long red hair, yes. That's the way you can -- and
8 slightly more sort of -- they all have exotic headdress,
9 they all have long hair -- most of them have long hair.
10 She has very long red hair with the sort of wing kind of
11 headdress involved.

12 Q I will show you what's been marked Exhibit 13. Do
13 you recognize that as Spawn 99?

14 A Yeah.

15 Q And show you one of the pages of that exhibit. Can
16 you just generally describe what's there?

17 A Looks like Angela fighting someone else, another
18 warrior angel. It's a bit blurred.

19 Q And again, I'll just represent the bubble on the
20 bottom, it says "By Elysium! The heavenly hosts." What
21 is that a reference to?

22 A Elysium was the place that they lived and the
23 heavenly hosts were the 330,000 kick-ass lady warrior
24 angels.

25 Q And again, were those elements that you created?

NEIL GAIMAN - DIRECT

1 A Yes.

2 Q And then showing you what's been marked as Exhibit
3 14, do you recognize that as Spawn Issue 100?

4 A I do.

5 Q And is that the one Angela dies in?

6 A Yes.

7 Q And I will show you one of the last pages of that
8 exhibit. And can you recognize what's being shown
9 there?

10 A Spawn holding Angela's dead body while all of the
11 other heavenly hosts of kick-ass lady warrior angels who
12 look a bit like her stand around in the air.

13 Q Now turning your attention more directly to Domina,
14 I'll show you what's been marked Exhibit 34. Can you
15 identify that?

16 A It's something from -- is it -- I cannot -- it's
17 Spawn website where it's actually from, but it's one of
18 those descriptions of characters from, whether a Spawn
19 encyclopedia or a Spawn into of Domina. Says her first
20 appearance is Spawn 96 and she is "the leader of a
21 phalanx of Heaven's angels" and a warrior angel, you
22 know, one of the leaders of the warrior angels.

23 Q I'll show you what's been marked -- it's also a
24 part of Exhibit 34. Can you identify what that is?

25 A No. What is it? I mean it's one of the warrior
NEIL GAIMAN - DIRECT

1 angels. I would have thought it was Angela, but the
2 hair is wrong and the headpiece is a little bit
3 different.

4 Q Are you able to read the text at the bottom?

5 A Domina photo. Domina images. It's a Domina.

6 Q And I'm just going to put these side by side --

7 A I mean it's the same sort of thing as Angela, she's
8 got the big boobs and --

9 Q I'll show you the cover of Spawn 9 and then the
10 Domina toy, see if I can -- how well I can do for
11 getting them both on the same page here. Can you
12 describe for the Court the similarities between the two?

13 A They are dressed incredibly similarly and they have
14 the same facial stuff, very similar hair. Slightly
15 different headpieces. I don't know, I would have
16 assumed that this was one of the variant Angelas. He
17 did a lot of -- Todd did a lot of Angelas in different
18 costumes, in the red costume, and changed the way she
19 looked as a toy. I would have thought it was one of
20 those.

21 Q I'll show you again another -- the final page of
22 Exhibit 34 and I'll again see if you can see at the
23 bottom there --

24 A Same loin cloth, things wrapped around the leg,
25 weaponry, slightly different upper body straps, but very

NEIL GAIMAN - DIRECT

1 similar costume.

2 Q And can you read the bottom? I can represent to
3 you that this is from the website. It says *Domina* on
4 it?

5 A I absolutely -- I can't read it, but I believe you.

6 Q Okay. Exhibit 34. Turning your attention to
7 Tiffany, first of all I'll show you what's been marked
8 Exhibit 16. Can you -- we just need to do it this way,
9 I guess. First of all what's it titled?

10 A It's the Spawn Bible. It's like a who's who guide
11 to Spawn characters.

12 Q And can you see that that's Exhibit 16?

13 A No.

14 MR. ARNTSEN: I'll represent it's Exhibit 16,
15 Your Honor.

16 THE COURT: All right.

17 Q And then turning to a page of Exhibit 16, can you
18 tell the Court what that is?

19 A That's a page of Tiffany, who's another one of the
20 warrior angels: Sharp shoulder points and blonder and
21 sort of hair that goes up and explodes rather than goes
22 down, but there's sort of long hair around the back.
23 Same knee things, same loin cloth and thong and big
24 belt, and heavy shoulder piece. And also the weaponry.

25 Q And I'm putting next to Tiffany -- the thing is not
NEIL GAIMAN - DIRECT

1 laying flat -- I'm putting next to it Angela from Spawn

2 9. Can you explain to the Court the similarities?

3 A Similar pose, very similar character. Again, the
4 hair color is very different, and Angela has sort of the
5 Viking wings as a headpiece, which Tiffany doesn't. But
6 they're obviously very similar characters. The facial
7 thing, the sort of masky face thing is the same, and the
8 style is the same.

9 MR. ARNTSEN: And Your Honor, rather than
10 reading it in, I could read it to the Court, but would
11 it be helpful to call to the Court's attention some of
12 the text from the biography here?

13 THE COURT: Sure. Go ahead.

14 MR. ARNTSEN: Review it.

15 THE COURT: Of Tiffany.

16 MR. ARNTSEN: On Tiffany. I'm reading -- I
17 think this is the easiest way to do this. I'm reading
18 from the Tiffany portion of the Spawn Bible.

19 MR. GRIMSLEY: Would it be easier to have your
20 witness read it? I have another copy of a page of it
21 here.

22 MR. ARNTSEN: Either. Whichever the Court
23 would prefer.

24 THE COURT: Go ahead and read it, Mr. Arntsen.

25 BY MR. ARNTSEN:

NEIL GAIMAN - DIRECT

1 Q "In all around skills as a hunter of Hellspawn,
2 Tiffany is second to only Angela and that is a point
3 Tiffany will argue to the death. This is a very noted
4 point in the fact that she is a new angel. Her ambition
5 and drive have increased her notification within the
6 flight at a high rate. The only word that describes her
7 is relentless. She harbors a strong distaste for
8 Angela. She feels Angela has crossed the line between
9 Heaven and Hell, an aversion brought on by Angela's
10 consorting with Spawn."

11 I'm just reading the first paragraph. I will show
12 you what's been marked Exhibit 8. Can you identify what
13 that is?

14 A Spawn.

15 Q Can you see what number it is?

16 A No.

17 Q I'll represent it's Spawn 44. Showing you one of
18 the pages of Spawn 44, do you recognize Tiffany there?

19 A Yes. Something saying about Angela, which was the
20 only word that I could actually read.

21 Q Showing you what's been marked Exhibit 9, do you
22 recognize what that is?

23 A 45. 45.

24 Q Spawn. And initially do you see in sort of the
25 text where I'm pointing to here -- and again, what I'm

NEIL GAIMAN - DIRECT

1 going to do is just briefly read for the Court, but I'll
2 represent to the Court that what Spawn 45 -- it's got a
3 brief synopsis of Spawn 44 in it because it's a
4 continuing story through there.

5 Are you able to read this from the screen, Neil, or
6 not?

7 A "Tiffany, wanting to make a name for herself and
8 take Angela's place, as the" something "A-1 angel,"
9 priority angel, A-1 angel. And then it gets impossible
10 to read.

11 Q Then showing you another page from Exhibit 9. Does
12 that show Tiffany?

13 A Yeah.

14 Q And again is it referencing Angela again?

15 A She says Angela, that treacherous whore. Is that
16 whore?

17 Q Showing you what's been marked Exhibit 10. Can you
18 identify what that is?

19 A Spawn 46.

20 Q And do you see again that there is a synopsis at
21 the start of it?

22 A "Tiffany and Spawn continue their battle. Denying
23 defeat, this new angel," something "decapitates Spawn."

24 Q That's fine. I'll show you what's been marked
25 Exhibit 35. Do you see Tiffany depicted there?

NEIL GAIMAN - DIRECT

1 A Um-hmm.

2 Q I'll represent to you that Exhibit 35 are screen
3 shots from the Spawn website.

4 Showing you the last page of Exhibit 35. Again, I
5 will represent to you that on the bottom, if you could
6 read it, it would -- can you read the --

7 A No.

8 Q -- text at the bottom?

9 A Can't.

10 Q I'll represent it's Tiffany images. Do you
11 recognize that as a Tiffany toy?

12 A I would have assumed it was an Angela variant, but
13 it could be a Tiffany toy. The hand is very different
14 from the way the Tiffany is actually drawn. It looks an
15 awful lot more like Angela.

16 Q And showing you again the drawing of Angela from
17 Spawn 9.

18 A Yeah, looks a lot more like her.

19 Q Yeah. Can you describe for the Court the
20 similarities?

21 A Actually the glare from the comics has kind of
22 wiped out both images for me at this point, if you could
23 -- the light really is bouncing back. But similar
24 poses. Similar faces. Very obviously the same kind of
25 thing.

NEIL GAIMAN - DIRECT

1 THE COURT: That helped a lot.

2 MR. ARNTSEN: Thank you. Starting to see his
3 examination be implicated by my technical problems here.

4 Q Now I want to turn your attention to Dark Ages
5 Spawn. Can you identify what --

6 MR. ARNTSEN: Your Honor, may I have an exhibit
7 sticker? Essentially I had a black and white copy of
8 this and --

9 MR. SIMMONS: That's defendants. You don't
10 want that.

11 Q I'll show you what's been marked Exhibit 28. Are
12 you aware of what that is?

13 A I am. That was the comic that they did with the
14 toy the first time -- when I came up with the idea of
15 Medieval Spawn, Todd was thrilled because he was doing
16 toys of the Spawn characters. So he did a Medieval
17 Spawn toy, as well as his early line of toys and gave
18 away a free comic with it and that's the comic that came
19 with it.

20 Q And can you just -- I'd like to show you --

21 A It says "Todd Toys presents Dark Ages. Medieval
22 Spawn. Story, Eldon Asp; Pencils, Brad Gorby," and so
23 forth. And then it says underneath "Medieval Spawn
24 created by Todd McFarlane and Neil Gaiman."

25 Q And then how does the comic start out?

NEIL GAIMAN - DIRECT

1 A "800 years ago," which is the same as the way that
2 Spawn 9 started out, 800 years ago.

3 Q I'll show you one of the pages. Are you able to
4 read the text on this page at all?

5 A Let go with your finger a second. That really
6 helped. That from the toy, took the stuff that I'd come
7 up with in Spawn Number 9 when he talks about how his
8 sister was this -- the person that he loved, but he came
9 back from the dead to find her married to his enemy.
10 And it talks there about how -- I can see the "all save
11 one his sister, whom he loved more than love, more than
12 life itself."

13 Q What was your understanding of how often Hellspawn
14 were to appear on Earth?

15 A Initially when I first talked to Todd, he said
16 every hundred years or so. And then by the time I came
17 to do the Angela mini series, it had been sort of
18 formalized as every 400 years.

19 Q When you say *formalized*, what do you mean?

20 A I mean it was part of the Spawn mythos that it was
21 400 years. You got a Spawn every 400 years.

22 Q And did Todd explain to you why he wanted the Spawn
23 spaced out?

24 A Because it kept them special.

25 Q Were there supposed to be more than one Hellspawn
NEIL GAIMAN - DIRECT

1 around at any given time?

2 A No. We sort of played with the idea. I suggested
3 it to him, but I don't know if he ever used it, that the
4 Cogliostro character I created was a very, very old
5 Spawn who had never quite let his powers run out and had
6 been around, you know, since -- for thousands of years.
7 But no, you don't get two Spawns at the same time; you
8 get one and then you get another one 400 years later. I
9 believe there's a futuristic Spawn comic or there used
10 to be set 400 years from now, for example.

11 Q I'll show you what has been marked as Exhibit 6.
12 Can you identify what that is?

13 A Looks like Spawn 12 -- no, Spawn 32?

14 Q It's 32.

15 A Okay.

16 Q And I'll show you one of the pages that -- are you
17 able to read the text in the yellow part below the
18 middle panel?

19 A "They occur but once" -- and then I lose it.

20 Q I'll just read it. "They occur but once each 400
21 years and their infrequency are relegated to fable and
22 legend." I'll represent that that's what that initial
23 paragraph says. When they are talking about that, are
24 they referring to Hellspawn?

25 A Yeah. You don't get one more than every 400 -- you
NEIL GAIMAN - DIRECT

1 get one every 400 years.

2 Q I'll show you what's been marked as Exhibit 32 and
3 I'll represent to you that it's a screen shot from the
4 Spawn website. Are you able to read it?

5 A I'm afraid not.

6 Q I'll represent to you that what -- and it's very
7 brief. "Spawn the Dark Ages. Spawn: The Dark Ages
8 introduces Lord Covenant, a 12th century knight killed
9 in a holy crusade far from his homeland, who returns to
10 Earth as a Hellspawn." I'll read the rest. It's two --
11 "As a plague of violence and turmoil cover the English
12 countryside, the Dark Knight must choose whether to
13 align himself with the innocent inhabitants of the
14 once-thriving kingdom or with the malevolent forces of
15 evil and corruption."

16 Now how does that character as described there
17 relate to the character that you created in Spawn 9?

18 A I would have assumed it was the same character.

19 Q And why is that?

20 A Because it's the one 1200 years ago who's the
21 knight in armor fighting the English countryside in
22 medieval times. It's not like there were two of them.

23 Q Show you what's been marked Exhibit 22. Can you
24 identify what that is?

25 A The cover of a Spawn, the Dark Ages.

NEIL GAIMAN - DIRECT

1 Q I'll represent it's Volume 1.

2 A Okay.

3 Q The character depicted there, was is -- in your
4 view what's the relation between that character and the
5 character that you created in Spawn 9?

6 A It looks like the same kind of thing. It's a
7 knight in armory Spawn, Spawn costume, big armory
8 bits -- can't really see much detail around the face --
9 with a shield there.

10 Q Showing you another page from --

11 A That's the same Spawn, big Spawn shield that we
12 have in Spawn 9.

13 Q And do you see at the bottom that Spawn is riding a
14 horse?

15 A Riding a horse, big red cloak. Yeah, it looks like
16 the same kind of thing.

17 THE COURT: This was a new series, Spawn the
18 Dark Ages?

19 THE WITNESS: Yes.

20 MR. ARNTSEN: Yes. And it's copyrighted 1998.

21 BY MR. ARNTSEN:

22 Q Can you identify what Exhibit 23 is?

23 A It a "Spawn the Dark Ages" cover.

24 Q You see it says Volume 2?

25 A Volume 2.

NEIL GAIMAN - DIRECT

1 Q And again, does that show the same character?

2 A Yep.

3 Q Are there differences?

4 A Sure. You've got longer hair right now and a
5 different kind of mask with sort of faintly dragonish
6 kind of shape rather than just a knight-in-armor shape
7 would be the obvious ones.

8 Q Are those changes consistent with the character
9 that you created in Spawn 9?

10 A Sure. I mean we get to see the character I created
11 in Spawn 9 in the five minutes before he gets killed. I
12 assume he's worn different things; he could well have
13 had a haircut.

14 Q Showing you what's been marked Exhibit 24. Can you
15 identify what that is?

16 A Spawn the Dark Ages, with the Spawn character
17 holding up a shield with arrows in it, and big sword.

18 Q Can you recognize that as Volume 3 or should I
19 just --

20 A Oh, yeah. I can see the 3 on the bottom.

21 Q Showing you a page from Exhibit 24, are you able to
22 read the area by where my finger is or no?

23 A "He had left behind a secret girl blossoming with"

24 -- I can see the words "his sister Eloise," is it?

25 Q And what's your understanding of what role his
NEIL GAIMAN - DIRECT

1 sister Eloise plays in these initial volumes of Spawn
2 the Dark Ages?

3 A He's come back from the dead and she's married to
4 his greatest enemy.

5 Q Showing you what's been marked Exhibit 25. First
6 I'll show you the exhibit sticker. Can you identify
7 what that is?

8 A It looks like a Spawn the Dark Ages and his costume
9 has changed. It's sort of dividing at the front, the
10 headpiece, and still has the big shield; something that
11 could be sort of hair or tentacles or spaghetti all
12 around his shoulders.

13 Q And again, you recognize this as the character you
14 created as part of the Spawn 9?

15 A Yeah. I mean he's the 12th century Spawn.

16 Q Show you what's been marked as Exhibit 26. Do you
17 recognize what that is?

18 A It says Spawn the Dark Ages, Spawn.com, and it's
19 him with the big Spawn shield from Spawn 9 on his back.

20 Q And do you see what --

21 A It's Number 15.

22 Q Thank you. Might be pushing what you'll be able to
23 read.

24 A It is.

25 Q Can you read the second paragraph or not?

NEIL GAIMAN - DIRECT

1 A No, not at all.

2 Q I'll just read it for the Court. "It was a
3 400-year gamble laid down by players who had no
4 intention of losing." What's your understanding of what
5 that referred to?

6 A The every 400 years appearance of a Spawn.

7 Q I'll show you another page. Do you see there that
8 the Spawn is getting a big ax?

9 A Um-hmm.

10 Q Again, is that consistent -- is that something that
11 you would expect happening to the character that you
12 created in Spawn 9?

13 A Sure. I would expect him to use all sorts of
14 medieval weapons. That's the fun of having a character
15 in that period. You get axes, you get maces, you get
16 whatever kind of weapons you could have used at that
17 time. In Angela Number 3, I have Angela fighting her
18 way through Hell with a stolen ax. Actually I may have
19 given Spawn a stolen giant ax. It's the kind of thing
20 you do, you give them weapons.

21 Q Show you what's been marked Exhibit 27. Can you
22 identify what that is?

23 A It's a Spawn the Dark Ages.

24 Q Can you tell what number it is?

25 A 22.

NEIL GAIMAN - DIRECT

1 Q And are you able to read the little blurb in middle
2 of the page there?

3 A No.

4 Q I'll just read it to the Court. "There was
5 something that Hell was not aware of, something not even
6 the greatest evil of all times could control. No two
7 Hellspawn can walk the Earth at once."

8 How does that in your mind relate to the issue of
9 whether the protagonist, the Spawn the Dark Ages is the
10 same character you created in Spawn 9?

11 A I use it's the same character. I mean you don't --
12 as I said earlier, you get one every 400 years. This is
13 the one in the 12th century.

14 MR. ARNTSEN: Jeff, did you have any other ones
15 you wanted me to just put into evidence? Alex, what's
16 the last exhibit number? Because I ended and then you
17 started and then you ended somewhere.

18 MR. GRIMSLEY: 66.

19 MR. ARNTSEN: 66. So I'm going to mark 66 and
20 67 here.

21 BY MR. ARNTSEN:

22 Q I'll show you what's been marked Exhibit 66. Can
23 you identify what that is?

24 A Spawn the Dark Ages 5.

25 Q And I'll show you --
NEIL GAIMAN - DIRECT

1 MR. GRIMSLEY: Allen, that was actually Exhibit
2 44.

3 MR. ARNTSEN: That's right. You marked all of
4 these. How 'bout I'll just change the 66 to a 44, if
5 that's okay with the Court.

6 THE COURT: It is.

7 MR. ARNTSEN: And then Alex, what number did
8 you mark Spawn Dark Ages 8?

9 MR. GRIMSLEY: 47.

10 MR. ARNTSEN: Okay.

11 BY MR. ARNTSEN:

12 Q So again, rebooting just for a moment for a cleaner
13 record, showing you what's been marked Exhibit 44, can
14 you identify what that is?

15 A Spawn the Dark Ages 5.

16 Q And then showing you what's been marked Exhibit 47.
17 Can you identify what that is?

18 A It's a Spawn the Dark Ages and it's Number 8.

19 Q Show you one of the pages from Exhibit 47.

20 A It's the same character and a different set of
21 clothes.

22 Q And what makes you say it's the same character?

23 A Because he's a knight in armory, Spawny. He's now
24 wearing a completely different helmet and his hair looks
25 different and -- but it's very recognizably the same
NEIL GAIMAN - DIRECT

1 character.

2 Q I'll show you what's been marked Exhibit 31, first
3 page. Can you identify what that is?

4 A Looks like a toy of a olden days knight in armor,
5 medieval period Spawn.

6 Q Is that the character you co-created?

7 A Yeah. It's a knight in armor. He has a big shield
8 and he's a Spawn.

9 Q Showing you the second page of that exhibit. Can
10 you read the text in the middle?

11 A It says "Spawn, Medieval Spawn, repaint/resculpt.

12 Q And what does that show?

13 A It's Medieval Spawn looking an awful lot like Dark
14 Ages Spawn, the way he's drawn on the cover of that.

15 Q Showing you the next page -- first of all, are you
16 able -- are you able to -- are you able to read the text
17 at the bottom of the page or no?

18 A No. I mean that's one of the -- that's the same
19 character it's a knight in armor Spawn. He's got the
20 sharp shoulders, face paint, and this time again big
21 bare arms. But it's the same character.

22 Q And I'll just represent that it's a shot from the
23 website and at the bottom it says Medieval Spawn 2 as
24 part of the website shot.

25 I'll show you the next page and I'll represent it
NEIL GAIMAN - DIRECT

1 also says Medieval Shawn 2.

2 A What's that? It's the same character with a scary
3 skull face, which would be the sort of the Spawn face
4 underneath the helmet.

5 Q And again, is that the same character that we --

6 A Same character, yes.

7 Q Showing you the next page. Can you just read the
8 text?

9 A I can see Medieval Spawn 3/Spawn/Series 20/Spawn
10 Classic Series 2.

11 Q And then I'll show you the next page which would
12 tell --

13 A That's him. He's holding the great big ax. He's
14 got the shield on. Again, it's much more sort of
15 classic armory look than the previous Medieval Spawn we
16 just saw with the bare chested and the big arm -- bare
17 arm thing. But it's the same character.

18 Q I'll represent in terms of the website, it says
19 "medieval" at the bottom and that that's the -- that's
20 the next -- that's a screen shot you get from the
21 previous page if you click on one of the buttons there.

22 Then I'll show you what's been marked Exhibit 33.

23 Are you able to read the text at the bottom?

24 A Dark Ages/Images/Series 26/Dark Ages 1.

25 Q What does that depict?

NEIL GAIMAN - DIRECT

1 A Somebody with blue skin and a skull head and a
2 shield and big boots.

3 Q Is that the character you created in Spawn 9?

4 A I don't think so. Maybe. I mean that one, if you
5 handed me that one and said is this a knight in armor
6 Spawn, Medieval Spawn, I don't think I would say yes on
7 that.

8 MR. ARNTSEN: That's all I've got. Thank you.

9 THE COURT: Why don't we take a 15-minute
10 recess at this point and then we'll resume with
11 defendants' questioning.

12 (Recess 10:24-10:40 a.m.)

13 THE COURT: Mr. Grimsley.

14 MR. GRIMSLEY: Thank you.

15 CROSS-EXAMINATION

16 BY MR. GRIMSLEY:

17 Q Mr. Gaiman, I'm Alex Grimsley, one of the attorneys
18 for Mr. McFarlane. I think we met earlier this morning.
19 As I understand your testimony, you are claiming a joint
20 copyright interest in the idea of a Spawn from medieval
21 times; is that correct?

22 A No.

23 Q So it would be possible for someone to create a
24 Spawn from medieval times without violating your joint
25 copyright?

NEIL GAIMAN - CROSS

1 A Sure.

2 MR. SIMMONS: I'm going to object to the extent
3 this calls for a legal conclusion.

4 THE COURT: Sustained.

5 BY MR. GRIMSLEY:

6 Q As I understand it, you're also claiming a joint
7 copyright interest in the idea of female warrior angels
8 who battle Hellspawn?

9 A No.

10 Q Okay. So you're not claiming that any female
11 warrior angel who battles Hellspawn would violate your
12 joint copyright ownership?

13 MR. ARNTSEN: Your Honor, object again as
14 calling for a legal conclusion.

15 THE COURT: Sustained.

16 MR. GRIMSLEY: Your Honor, if I may, I was
17 simply asking the plaintiff what he's claiming. I'm not
18 asking him for --

19 THE COURT: The objection is still sustained.

20 MR. GRIMSLEY: Okay. Thank you.

21 BY MR. GRIMSLEY:

22 Q In what was previously marked as Exhibit 16, there
23 is a page describing Angela. Are you familiar with that
24 page?

25 A No.

NEIL GAIMAN - CROSS

1 Q Okay. Let me actually bring it up to you.

2 MR. GRIMSLEY: May I approach, Your Honor, so
3 he can have a hard copy?

4 THE COURT: Yes, and you don't need to ask.

5 MR. GRIMSLEY: Thank you. Old habits don't die
6 easily.

7 THE COURT: It's okay to ask the first time.
8 You don't need to do it again is all.

9 BY MR. GRIMSLEY:

10 Q Let me know when you've had a moment to review the
11 page, Mr. Gaiman.

12 A Yes, I'm looking through it.

13 Q And the Angela described on that page, that's one
14 of the characters that you co-created with
15 Mr. McFarlane?

16 A Yes.

17 Q And is that an accurate description of the
18 character you co-created?

19 A Yes.

20 Q The text summarizes sort of her motivations and
21 drives and personality?

22 A The text is an adequate and fairly literate
23 description by somebody else of the plot of Angela, of
24 Spawn 9, and of Angelas 1 to 3. I don't know that I
25 would agree with everything. I didn't write this.

NEIL GAIMAN - CROSS

1 Q Okay. Are there parts of it that you disagree
2 with, having had an opportunity to look at it?

3 A The line "Angela comes from Elysium, the first
4 level of the seven Heavens, closest to God" is not, for
5 example, anything that I -- you know, I just created
6 Elysium. If Todd wants seven levels, he can add another
7 six. That's fine.

8 Q So --

9 A That's not --

10 Q -- it's a little more detailed than what you had in
11 mind.

12 A How do you mean?

13 Q Seven levels or something is more than you had
14 planned, had designed in your Heaven, in your Elysium?

15 A I created Elysium.

16 Q Did you provide -- did you create the detail of
17 seven levels?

18 A No.

19 Q Yeah. So that's something someone else created?

20 A I would imagine, possibly the person who wrote this
21 thing. I have no knowledge of who wrote it or --

22 Q And do you claim any co-copyright ownership in the
23 idea that there's seven levels?

24 A I didn't make that up.

25 MR. ARNTSEN: Object, Your Honor, again in
NEIL GAIMAN - CROSS

1 terms of claiming copyright ownership.

2 THE COURT: Sustained.

3 BY MR. GRIMSLEY:

4 Q You don't contend that you co-created the idea of
5 seven levels of Elysium?

6 MR. ARNTSEN: Same objection.

7 THE COURT: Overruled.

8 BY MR. GRIMSLEY:

9 Q Do you need the question again, Mr. Gaiman?

10 A No. Alan Moore came up with the idea that there
11 was seven levels of Hell in Spawn 8, and -- I'm pretty
12 sure it was seven levels -- and that was Alan's idea,
13 and I imagine that is a reflection of the same thing
14 done in angel terms.

15 Q Okay. Anything else in that description from
16 Exhibit 16 of Angela that you believe is not accurate of
17 the character that you co-created?

18 A I didn't write this. It's somebody else's
19 description. I would probably quibble with words all
20 the way through it, but that's because I didn't write
21 it.

22 Q So are you now saying that's not an accurate
23 description of the character that you co-created that
24 we're talking about today?

25 A No. But that wasn't what you asked me.

NEIL GAIMAN - CROSS

1 Q Okay. Are there aspects of the description on that
2 page in Exhibit 16 that you do not believe fairly
3 describe the character Angela that you co-created?

4 A I think that's a perfectly adequate description by
5 somebody of the character in Spawn 9 and Angelas 1 to 3.

6 Q And that's the character Angela that you contend
7 the character Tiffany is derived from?

8 A Yes.

9 Q And that's the character that you contend the
10 character Domina is derived from?

11 A Yes. And the entire order of angels.

12 Q Okay. Are you claiming any ownership on all angels
13 because you came up with the idea of a host of angels?

14 MR. ARNTSEN: Object. Legal conclusion.

15 THE COURT: Sustained.

16 BY MR. GRIMSLEY:

17 Q Would it be possible -- would it be possible for
18 someone to create a female warrior angel who was part of
19 this army of angels without you feeling that they had
20 derived it from Angela?

21 MR. ARNTSEN: Object. Calls for a legal
22 conclusion.

23 THE COURT: Sustained.

24 BY MR. GRIMSLEY:

25 Q Let me show you the page of Medieval Spawn from
NEIL GAIMAN - CROSS

1 Exhibit 16. Medieval Spawn is another character you
2 co-created?

3 A Yeah. I call him Olden Days Spawn, I think, in
4 this script, but Todd started calling him Medieval
5 Spawn.

6 Q And in the script you actually think you named him
7 something?

8 A He was Spawn. He was the Spawn of 800 years ago.

9 Q In the script earlier, you just read something like
10 Spawn rides up on a horse. You didn't even say Olden
11 Day Spawn, did you?

12 A Something like that.

13 Q Have you ever seen this description of Medieval
14 Spawn before that you've been handed from Exhibit 16?

15 A Don't think so, but -- okay, read it.

16 Q Is that a fair description of the character that
17 you co-created?

18 A It's an invented back story, I guess. It could be
19 -- I didn't make any of that up, so that's not my -- I
20 don't know who wrote that.

21 Q There's more story there than you gave the
22 character that you created?

23 A Yes. That's -- the story that I made up is the
24 stuff right at the end and the stuff about the sister,
25 which doesn't seem to be in there.

NEIL GAIMAN - CROSS

1 THE COURT: And I don't have that exhibit in
2 front of me. Would you read the part at the end that
3 you said you made up?

4 THE WITNESS: Sure. He resisted -- "he was
5 destroyed by Angela, without ever fully comprehending
6 what he was."

7 THE COURT: Thank you.

8 MR. GRIMSLEY: I'll take that back.

9 THE WITNESS: I think that's an adequate
10 description.

11 BY MR. GRIMSLEY:

12 Q But the rest of the back story is something you
13 didn't have any contribution to?

14 A Not at all.

15 Q You didn't draw any of the images of Angela or
16 Medieval Spawn, correct?

17 A I gave thumbnails and drew the characters. They
18 were on the record in the previous trial. I don't know
19 if they're in this one, but yes, I did.

20 Q Did you draw any of the published images of Angela
21 or Medieval Spawn?

22 A No.

23 Q Okay. You wrote a script and then Mr. McFarlane
24 and others did the illustrations?

25 A I wrote a script with thumbnail pictures, which I
NEIL GAIMAN - CROSS

1 gave him as well, which Mr. McFarlane turned into a
2 comic and then I drew thumbnails and dictated a script
3 for Greg Capullo.

4 Q For the Angela 1, 2, 3 series?

5 A For Angela 1, 2 and 3.

6 Q Taking Angela first, did your script provide
7 guidance as to how she should look?

8 A Yes. But the way that she would look had already
9 been established by my co-creator, Mr. McFarlane.

10 Q With the cover?

11 A With the cover drawing. Because that was the -- I
12 talked about the idea with him over the phone. He
13 then -- I then sent him a written description, but just
14 enough for the solicitation, and then he did the first
15 drawing. So I described her in the script, but my
16 co-creator had already given her a look.

17 Q And did your script provide any guidance as to how
18 Medieval Spawn should look?

19 A I would have to look at the script again. I'm sure
20 it did, but probably not very much. It would have said
21 something like Spawn, you know, it would be a medieval
22 version of the Spawn costume or an armored version of
23 the Spawn costume. I would have included the big Spawn
24 shield because that was on the cover.

25 Q Let me just put up the first page of Exhibit Number
NEIL GAIMAN - CROSS

1 1. I believe you testified earlier you recognize this
2 as a cover for Spawn Issue 9?

3 A Yeah.

4 Q And that's the issue in which Angela and the
5 character we now call Medieval Spawn first appeared,
6 correct?

7 A Yes.

8 Q And you wrote the script for Issue 9, did you not?

9 A Yes.

10 Q And before reading that script, you had received
11 prior issues of Spawn?

12 A I think there had been maybe three or four written
13 at that time.

14 Q And you received drafts of issues that had not yet
15 been published that were --

16 A Yeah.

17 Q -- in the work, right? And you read all those
18 issues?

19 A And talked to -- Todd and I started talking about
20 it prior to, at least while I think Todd was working on
21 about Issue 5, because I remember having to do some --
22 having -- talking to Alan Moore and needing to make sure
23 that we were in sync on our stories.

24 Q And you needed to understand the background and the
25 setting?

NEIL GAIMAN - CROSS

1 A Sure.

2 Q So you tried to gain an understanding of the story
3 up to that point with respect to the character Spawn and
4 the idea of these Hellspawn?

5 A Well, there weren't these Hellspawn at that time,
6 there was Spawn.

7 Q Okay. We'll get to that. But you understand --
8 understood that a Hellspawn was a creature fighting in
9 Hell's army?

10 A Yes.

11 Q And you understood that a Hellspawn was training or
12 preparing for an upcoming war?

13 A No, I think I made that up.

14 Q Okay. You think you made up the idea that there
15 was an army that was going to fight a war?

16 A I may have. I don't know. It was a long time ago
17 and I don't remember.

18 Q I'll put up another exhibit. This is 37. Do you
19 recognize this cover?

20 A That says Spawn.

21 Q You don't recognize the cover?

22 A No.

23 Q What if I put up the next page, does that help?

24 A Yeah, Spawn 8.

25 Q Spawn Issue 8, which preceded the issue that you
NEIL GAIMAN - CROSS

1 wrote?

2 A Yeah.

3 Q Okay.

4 A Though I think we were writing at the same time.

5 Q I put up the second page of that. Bates number
6 174.

7 A Um-hmm.

8 Q Okay. I know it's a little fuzzy, it's hard to
9 see, but you should be able to make out the words at the
10 bottom of the page?

11 A Yes. "In Heaven everything is fine."

12 Q So the idea of Heaven and Hell were already
13 introduced prior to Issue 9?

14 A Sure. That's Alan Moore's issue. It's actually
15 set in Hell. That's an ironic title.

16 Q And another page from that same issue, do you see
17 the image at the bottom of the page there?

18 A Yes.

19 Q You probably can't read the text?

20 A No.

21 Q But it's talking about an evolving neural parasite?

22 A Um-hmm.

23 Q Does that have any meaning to you in the context of
24 Spawn?

25 A Sure. That was -- Todd had asked Alan and he
NEIL GAIMAN - CROSS

1 mentioned to me that he kept drawing the Spawn costume
2 differently because he couldn't ever remember how many
3 chains and spikes there were to be. So he was now
4 getting letters from kids saying that the costume kept
5 changing and could we come up with a rationale for why
6 the costume was changing. So Alan came up with the
7 idea, and I think we were talking about it, that it was
8 -- the costume was a neural parasite and the costume was
9 alive and it would keep the Spawn costume evolved and
10 changed and responded and it wasn't actually a frozen
11 thing.

12 Q So the costume itself is sort of a living thing?

13 A Yes.

14 Q And I think in your Issue 9 that you wrote, you
15 referred to it as a carapace?

16 A Yes.

17 Q Which probably technically means something like an
18 exoskeleton?

19 A Yes.

20 Q Then later in Issue 8, there is also -- the last
21 page of the actual issue -- we have this page?

22 A Next issue, the Gaiman.

23 Q Right.

24 A Is it "the" Gaiman? Neil Gaiman.

25 Q Sorry this isn't better in focus. Let's see if we
NEIL GAIMAN - CROSS

1 can manually zoom. See there at the feet of the devil
2 creature?

3 A Um-hmm.

4 Q Can you make out what is gathered at his feet?

5 A Lots of -- lots of spawn costumes, probably with
6 people in them.

7 Q So a mass of other Hellspawn?

8 A No, not necessarily. These are creatures in Hell.
9 You get one Hellspawn in -- on every 400 years. These
10 were lots and lots of neural parasites wearing people.
11 The idea was -- or at least that was the way that Alan
12 and I talked it through at the time.

13 Q Okay. So you don't view those creatures as being
14 Hellspawn because they're still in Hell?

15 A Yeah, they're not Spawn. Spawn is this guy --

16 Q And where -- I'm sorry.

17 A -- who comes to Earth -- well, not who comes to
18 Earth. Every 400 years one of these guys gets tested to
19 be officer material and the army -- those are the Grants
20 in the army. It's the difference between a general and
21 the troops.

22 Q Okay. So whatever those creatures are wearing, the
23 neural parasites --

24 A Or the neural parasite wearing them.

25 Q They are the army?

NEIL GAIMAN - CROSS

1 A Sure.

2 Q Okay. All right. So the idea that there was an
3 army of individuals in Hell wearing the neural parasitic
4 suit or having a neural parasitic suit wear them, if you
5 will, preexisted Issue 9?

6 A That was Alan's idea at the time and we talked
7 about it at the time.

8 Q And it preexisted Issue 9, right?

9 A It preexisted the publication of Issue 9, sure.

10 Q Right. I mean it was in Issue 8, that precedes
11 Issue 9, correct?

12 A Not necessarily the way that comics are written I'm
13 afraid. It's not like Alan writes this issue and then
14 Todd draws it and then I write Issue 9 and then Todd
15 draws it.

16 Q Several issues may be being worked on --

17 A May be working on them at the same time, so --

18 Q You knew there was an army in Hell. You knew Hell
19 was preparing for a battle --

20 A Um-hmm.

21 Q -- correct? And so the first creative leap that
22 you made, if you will, is that an army in Hell would be
23 battling Heaven?

24 A It seemed logical and is traditional.

25 Q And so you decided to create a character out of
NEIL GAIMAN - CROSS

1 Heaven's army?

2 A Yes.

3 Q And that was a warrior angel?

4 A Hunter angel, but yes.

5 Q And you picked a female character because Spawn was
6 male?

7 A Yes.

8 Q And in your script idea, you wanted to start off
9 with this hunter angel killing a Spawn from another time
10 and then have her set out to kill the Spawn in the
11 current time?

12 A Yes.

13 Q Okay. And you picked the idea of a knight in armor
14 Spawn because you thought it would be cool for
15 12-year-old boys?

16 A Yeah, basically, and because it seemed like the
17 kind of thing that Todd could have fun with. He could
18 make toys of this character.

19 Q And toys were made of the character, correct?

20 A Immediately, yes.

21 Q And relatively -- was the character ever named
22 Medieval Spawn before the toy came out?

23 A No. I think Todd needed a name for the toy, so it
24 said Spawn on the cover and then on the inside Dark Ages
25 and then Medieval Spawn. It was a name for the thing.

NEIL GAIMAN - CROSS

1 And then I think so that he had some way to -- the
2 Medieval Spawn created by Neil Gaiman and Todd
3 McFarlane, that's indicating we are talking this Spawn;
4 this knight in armor Spawn.

5 Q So let's step back for a minute. You're a writer,
6 correct?

7 A Correct.

8 Q And as a writer you invent stories?

9 A That's what I do.

10 Q And you invent characters who are part of those
11 stories?

12 A Yes.

13 Q And sometimes your stories might bear similarity to
14 another story?

15 A It happens over and over. They say there are three
16 different stories you can tell.

17 Q Let's just take a real world example. I mean
18 you're the author of American Gods?

19 A Um-hmm.

20 Q And you've been asked in the past to -- if American
21 Gods was inspired by Eight Days of Luke by Diana Wynne
22 Jones?

23 A Yes. The answer was no.

24 Q Right. And you've said basically although they do
25 bear superficial similarity to each other, that was not
NEIL GAIMAN - CROSS

1 your inspiration?

2 A You have to really push it to find similarity
3 between the two.

4 Q Okay.

5 A What I actually said was that I came up with a way
6 of telling the story which was going to be naming days
7 of the week after the gods that they are named after and
8 when I came up with that, I realized that Diana had done
9 something in eight days -- Diana Wynne Jones, the
10 English author, had done something similar in Eight Days
11 of Luke. But the plot of American Gods and the plot of
12 Eight Days of Luke bear no relationship to each other
13 nor do the characters.

14 Q Okay. And sometimes characters that you create
15 might bear superficial similarities to characters
16 someone else creates, right?

17 A I'm sure it happens.

18 Q And that's true even when you've created characters
19 out of whole cloth?

20 A That's always true.

21 Q And some of that is driven by the fact that two
22 characters from the same time period may do similar
23 things?

24 A You'd have to rephrase that question into something
25 that's --

NEIL GAIMAN - CROSS

1 Q Let's take an extreme. Two different characters
2 someone created that were cavemen might have some
3 superficial similarities.

4 A They may. You're asking me --

5 Q I mean if you were --

6 A I'm not sure --

7 THE REPORTER: Whoa, whoa, whoa. One at a
8 time, please.

9 Q I mean if you were to create a caveman character, I
10 mean you might give him a club as a weapon, right?

11 A It's a strange hypothetical. I've never written a
12 caveman that I can think of and I don't think I'd give
13 him a club because it's kind of stupid. I'd probably
14 give him a stone ax because that's what they used.

15 Q Okay. And then if someone else used a stone ax for
16 a caveman, doesn't mean they derived it from your
17 caveman, right?

18 A I would assume not.

19 Q Okay. Now with Medieval Spawn, you were working
20 within the preexisting world of Spawn, right?

21 A Sure.

22 Q And you created a -- the idea of a knight in armor
23 Spawn, right?

24 A No. I created the character.

25 Q Okay. So you created -- you created a knight in
NEIL GAIMAN - CROSS

1 armor Spawn?

2 A Yes.

3 Q You and Mr. McFarlane together.

4 A Yes. That's why it says Medieval Spawn created by
5 Neil Gaiman and Todd McFarlane on the top in the typing.

6 Q Okay. And certain aspects of what we'll now call
7 *Medieval Spawn* were derived from Spawn himself, the
8 original Spawn?

9 A Sure. That's why it's a derivative character.

10 Q And certain aspects of the character were derived
11 from sort of the scene and the aspects of just the
12 series Spawn, correct?

13 MR. ARNTSEN: Object. I don't understand the
14 question.

15 THE WITNESS: Give me some specifics.

16 Q Sure. Spawn is full of fighting, right? The comic
17 book series, it's full of fighting?

18 A I guess.

19 Q It's an action series, right? Spawn fights people.

20 A Yeah, sure.

21 Q So Medieval Spawn was going to be a fighting
22 character probably, right?

23 A I guess.

24 Q Not a traveling minstrel, right?

25 A It could have been a traveling minstrel, that would
NEIL GAIMAN - CROSS

1 have been fun to write, too.

2 Q And would that have fit --

3 A It would have been a different story.

4 Q Would that have fit with the notion of a creature
5 who's training to lead Hell's army?

6 A Might have been fun. I only had eight pages and I
7 don't think he would have wanted to do a minstrel toy,
8 but we could have gone there.

9 Q So your choice that this 800 year ago Spawn would
10 be a knight had nothing to do with the fact that it was
11 supposed to be a fighting character?

12 A You have -- when you're starting any kind of
13 writing process, you have an infinite number of ways to
14 go. I could not pretend, seventeen years later at this
15 point, to reconstruct my thought processes on how I
16 decided it was going to be a knight in armor and why it
17 would have been an 800 year ago. So I feel like any
18 answer I could give you now would be fundamentally
19 imaginary. I would be making up an answer which would
20 give you that justice.

21 Q So you can't say really one way or the other
22 whether the idea that this character would be a knight
23 in armor was driven in some respects by the fact that he
24 was going to be a fighting character, just like the
25 original Spawn?

NEIL GAIMAN - CROSS

1 A In a comic called 1602 which I did for Marvel
2 comics from 2002/2003 through 2004, I reinvented all of
3 the Marvel characters and set them in the early 17th
4 century, in 1602, and created Daredevil. Marvel's big
5 fighting superhero was actually a minstrel in it and I
6 invented him as a blind traveling minstrel. If you're a
7 good writer, you create characters that live on that
8 exist and you don't say ah, because this is fighting,
9 you can only be this one thing. That's a nonsense.

10 Q Mr. Gaiman, I'm simply asking whether your choice
11 of this character was a knight was driven in part by the
12 fact that the character was going to be a fighting
13 character. I mean you can either remember that or you
14 can't.

15 A I don't remember.

16 Q Okay. Now the original Spawn had made a deal with
17 the devil, correct?

18 A Um-hmm.

19 Q And so Medieval Spawn was going to make a deal with
20 the devil.

21 A Um-hmm.

22 Q And as part of the deal the original Spawn makes,
23 he's returned to Earth?

24 A Yeah.

25 Q And so with Medieval Spawn again, part of the deal
NEIL GAIMAN - CROSS

1 is he's returned to Earth.

2 A Exactly.

3 Q Okay. And the original Spawn is endowed by the
4 devil with certain powers.

5 A Yeah.

6 Q And so Medieval Spawn was going to be endowed with
7 these same powers or similar powers.

8 A Similar one assumes, yes.

9 Q And the original Spawn didn't understand when he
10 got returned to Earth what had happened to him
11 initially, correct?

12 A Correct.

13 Q It took him a little while to adjust to being sent
14 back to Earth.

15 A Initially he was a bit bewildered, yes, and it took
16 a lot of people explaining the plot to him until he
17 actually caught up the plot.

18 Q And the original Spawn, when he's returned to Hell,
19 he's sent sort of into his own -- slightly into the
20 future of his own prior existence, right?

21 A As I remember, yes.

22 Q And that's part of the confusion, right? Because
23 things have changed a little bit in the world.

24 A Yeah, I guess. I mean I don't know -- I'll leave
25 it for your question. I'm sorry.

NEIL GAIMAN - CROSS

1 Q That's quite all right. But again, when you wrote
2 the character Medieval, who is now Medieval Spawn, he
3 also didn't understand what had happened to him,
4 correct?

5 A He -- he -- he hadn't figured out -- he didn't --
6 he definitely didn't know all the ins and outs of it.

7 Q Well --

8 A I think his dying words are *I don't understand* or
9 something like that and she says *no, because you're*
10 *stupid* or words to that effect.

11 Q So he's killed before he ever really understands
12 what's happened to him?

13 A There isn't a lot of opportunity on those eight
14 pages for conversation. In my back story in my head, I
15 think he'd been probably around fighting for, you know,
16 five/ten years, but nobody had actually turned around at
17 that point and said this is actually what's going on.
18 You are going to be in Hell's army. Blah, blah, blah,
19 blah, blah. But he had been -- he had still been going
20 around doing a certain amount of good wherever he could
21 and being noble, even though he was a Spawn.

22 I seem to remember some line about how when Spawns
23 were young they could still do things that were -- still
24 fight for good, and I assume in the case of young and
25 fighting for good, I take it that Spawn is still

NEIL GAIMAN - CROSS

1 fighting for good eighteen years after the comic
2 started. So the print gives you eighteen years at
3 least.

4 Q So Spawn, as you know, the portion where we meet
5 Medieval Spawn and we first meet Angela is written as
6 sort of a hunting manual --

7 A Yeah.

8 Q -- right? A hunting manual to train the angel
9 characters how to hunt and dispatch --

10 A Sure.

11 Q -- Hellspawn. And one of the comments is it's
12 easiest to kill them when they're young?

13 A Absolutely. What I was definitely thinking of at
14 that point was the idea of this Cogliostro character,
15 who I was calling Cogliostro, who shows up later in that
16 issue, and he's an incredibly old Hellspawn. So -- and
17 as they get older and older, they get eviler and
18 trickier and harder to kill. So I figured a
19 100-year-old Spawn, dead nasty. Five-year-old,
20 ten-year-old Spawn, probably a lot easier.

21 Q Can you at all make out --

22 A No. You're going to have to bring it up if you
23 want me to read anything.

24 Q Let me read you from Exhibit 1 a line that the
25 Medieval Spawn character utters. "No wizard, fair one.

NEIL GAIMAN - CROSS

1 Once I was a man. A bad man. Now I know not what I
2 am." Right? Does that sound familiar to you?

3 A Are you asking did I write it?

4 Q Yes. Did you write it?

5 A Yes, I wrote it.

6 Q Okay. And in that line, the Medieval Spawn
7 character is expressing that has not figured out what or
8 who he is.

9 A Or at least he is not -- whatever he has figured
10 out, he's definitely not going to pass on to a damsel in
11 distress that he's met at that moment, yes. I mean
12 that --

13 Q Oh. So you think he's being coy with the maiden
14 rather than actually expressing that he has not yet
15 figured out who he is?

16 A Maybe.

17 Q Okay.

18 A I mean he's just met her. She's going ah, I'm a
19 damsel in distress. Something bad is happening there.
20 What are you? And he said well, I was a bad man. Now I
21 could be anything, b-r-r-r-r, and he's off to fight.

22 Q Okay. So he's just keeping himself close to the
23 vest.

24 A Yeah.

25 Q Okay. And then he's killed?

NEIL GAIMAN - CROSS

1 A Yeah.

2 Q Okay. And he's killed 800 years prior to the
3 present day?

4 A Yeah.

5 Q Okay. Hand you a couple of the toys. Mr. Gaiman,
6 the one on your left is Exhibit 43. The one on your
7 right is actually the toy that contains the comic that
8 was marked as Exhibit 28.

9 A Okay.

10 Q Okay? And let's start with the -- just using those
11 two characters as a reference, you admitted that
12 Medieval Spawn is derived from the character Spawn?

13 A I don't admit it. I avow it. It's a derivative
14 character.

15 Q Right.

16 A That's the point.

17 Q Okay. In looking at those two characters, I mean
18 you can see they both have spikes as part of the neural
19 parasitic covering?

20 A No. They both have arm spikes. Well, they
21 actually both have an arm spike on the right arm.

22 Q And the original Spawn, if you look under his cape,
23 has spikes on his leg as well. It's hard to see.

24 A And on the left leg, yes. He has some spikes on
25 his left leg.

NEIL GAIMAN - CROSS

1 MR. ARNTSEN: Your Honor, if these are
2 exhibits, I'll stipulate the toys show what they show.
3 I don't know if we can move this along somehow, but --

4 MR. GRIMSLEY: I think it's important for us to
5 understand which elements are shared by the various
6 characters because it goes to the various --

7 THE COURT: And you don't think I could look at
8 it to see that?

9 MR. GRIMSLEY: I'm sorry?

10 THE COURT: You don't think I could see that
11 when I looked at it?

12 MR. GRIMSLEY: If you looked at the two. I'd
13 like to highlight a few because they're going to be
14 important with Dark Ages as well.

15 THE COURT: Okay. All right.

16 BY MR. GRIMSLEY:

17 Q So we have the spikes. They both have the "M" on
18 the chest, correct?

19 A Yes.

20 Q Okay. Both characters have green eyes, both Spawn
21 and Medieval Spawn?

22 A In this toy, yes.

23 Q Okay. And in the comic?

24 A On the cover that I can see, yes. I have --

25 Q In the comics that you worked on.

NEIL GAIMAN - CROSS

1 A I'd have to go back and look at Number 9 to see if
2 the eyes glow greenly. I will take your word quite
3 happily.

4 Q And they both have the Spawn logo and things on the
5 package. I mean the shield itself is the Spawn logo,
6 correct, for the Medieval Spawn?

7 A Yeah.

8 Q Okay. Now beyond those elements, did you use any
9 other works to add the knight-in-armor aspects to
10 Medieval Spawn?

11 A I don't understand the question.

12 Q Well, there's aspects of Medieval Spawn that are
13 derived from Spawn.

14 A Um-hmm.

15 Q Are there aspects of Medieval Spawn that are drawn
16 from other works?

17 THE COURT: Other -- are you talking about
18 other works that would be at issue in this case or just
19 any other works?

20 MR. GRIMSLEY: Any other work.

21 MR. ARNTSEN: Object. Vague.

22 BY MR. GRIMSLEY:

23 Q Okay. Did you draw in your general understanding
24 what a knight in armor is?

25 A I -- okay. Things that I drew on to create the
NEIL GAIMAN - CROSS

1 Medieval Spawn would include Barbara Tuchman's book *A*
2 *Distant Mirror*; many visits as an English child to
3 museums; to Hever Castle, which although it's actually
4 very, very late medieval, early Renaissance, has lots of
5 great armor and things like that; going to the Tower of
6 London; reading Thomas Malory, and so on and so forth.

7 Q You have a general understanding of what a knight
8 in armor should be and what he should do, correct, from
9 your background in life?

10 A From reasonably extensive reading, and yes, being a
11 human being on this planet.

12 Q For instance, a knight in armor will typically ride
13 a horse because that was the means of transportation 800
14 years ago, right?

15 A The horse and also the cart were definitely means
16 of transportation 800 years ago.

17 Q Right. The cart being pulled by a horse or donkey
18 or oxen or some other beast?

19 A Goat.

20 Q I mean so some of that is just based on the time
21 period?

22 A Sure. He's not in a car.

23 Q Now sometimes when other authors create characters
24 that might have similarity with characters you create,
25 doesn't mean they're derived from your character, right?

NEIL GAIMAN - CROSS

1 A Right.

2 Q And you agree that superficial similarities between
3 two characters doesn't mean that they were derived from
4 each other necessarily?

5 A Absolutely.

6 Q You're familiar with a series, I think it's called
7 *Books of Magic*?

8 A Um-hmm.

9 Q Okay. And is that a series you worked on?

10 A That's a series I created.

11 Q Okay. You created? And you created -- is there a
12 male lead character?

13 A There is a character called Timothy Hunter.

14 Q Timothy Hunter. And is he a wizard kid?

15 A No. He has the potential to be the greatest
16 magician the world has ever seen.

17 Q Okay, he's a magician.

18 A He's a magician.

19 Q Does he have a pet owl?

20 A He does.

21 Q Does he enroll in a school of magic?

22 A Not while I was writing he didn't.

23 Q Did he later in the series?

24 A I don't remember, did he?

25 MR. ARNTSEN: Your Honor, I'm going to object
NEIL GAIMAN - CROSS

1 on relevance grounds.

2 THE COURT: Sustained.

3 BY MR. GRIMSLEY:

4 Q He has heavily rimmed black grasses?

5 MR. ARNTSEN: Object on relevance grounds.

6 THE COURT: Sustained.

7 THE WITNESS: Timothy Hunter bears certain
8 similarities --

9 THE COURT: I sustained the objection.

10 THE WITNESS: I'm sorry.

11 BY MR. GRIMSLEY:

12 Q It's been suggested to you that the character Harry
13 Potter is very similar to this character from *Books of*
14 *Magic*?

15 MR. ARNTSEN: Object on relevance grounds.

16 THE COURT: Sustained.

17 BY MR. GRIMSLEY:

18 Q And you publicly rejected the idea that Harry
19 Potter was derived from your character?

20 MR. ARNTSEN: Your Honor, I object.

21 THE COURT: Mr. Grimsley, that subject has been
22 explored as long as it's going to be explored.

23 MR. GRIMSLEY: Okay. I was simply trying to
24 make my record so we had the questions on the record,
25 understanding it would be sustained. Having further,
NEIL GAIMAN - CROSS

1 may I proffer them in a written submission that these
2 were the questions I would have asked?

3 THE COURT: You may.

4 MR. GRIMSLEY: Thank you.

5 BY MR. GRIMSLEY:

6 Q So before we went down that path, in creating
7 characters there are certain stock characteristics that
8 you might apply to the endeavor, depending on the nature
9 of the character?

10 A Give me an example.

11 Q Well, let's take a knight in armor. You might have
12 armor, right?

13 A If he's a knight in armor, he would definitely have
14 armor. If he didn't have armor, he would be a knight
15 not in armor.

16 Q So I mean that's kind of a stock characteristic of
17 a knight in armor, correct?

18 A No. It's actually part of the definition of a
19 knight in armor that he wears armor.

20 Q Okay. Okay. Difference in terminology. Let's
21 take it differently. If you were creating a mobster, he
22 might have a Sicilian accent?

23 MR. ARNTSEN: Your Honor, object. Relevance.

24 MR. GRIMSLEY: He asked for an example, Your
25 Honor. I'm just trying to get an example.
NEIL GAIMAN - CROSS

1 THE COURT: I'll overrule it to that extent.
2 Why don't you start again, Mr. Grimsley.

3 MR. GRIMSLEY: Sure.

4 BY MR. GRIMSLEY:

5 Q If you were creating a mobster, he might have an
6 Italian or Sicilian accent?

7 A Probably not.

8 Q Not --

9 A I don't think I've ever created any Sicilian or
10 Italian mobsters. I've written a lot of criminals.

11 Q So to you, that would not be something that would
12 be likely to be on such a character?

13 A I'm not sure what you're asking.

14 Q My question was in creating characters, there's
15 sometimes stock characteristics that you might apply,
16 correct?

17 A And I said give me an example. Are you talking
18 about -- are you talking about yourself as a writer or
19 me as a writer?

20 Q I'm talking about you as a writer.

21 A Okay. Good. So give me an example for myself.

22 Q Well, I'm trying to take a hypothetical. Let's say
23 you were creating a character as a judge. They might
24 wear a black robe.

25 A Well, if there were in a American courtroom, of
NEIL GAIMAN - CROSS

1 course they wear a black robe. But that's not a stock
2 character. That's part of what they wear.

3 Q Well, I know judges who wear other colors, but you
4 might --

5 A I don't. I only remember Judge Shabaz. They are
6 very different. I can't see that I could create a stock
7 judge from Judge Shabaz and Judge Crabb.

8 THE COURT: Thank you. Appreciate my
9 individuality.

10 MR. ARNTSEN: Your Honor, I just object on
11 relevance grounds. We should just try to stick to the
12 point a little more.

13 THE COURT: I understand the point you're
14 trying to make, Mr. Grimsley, but I don't think you're
15 getting at it very directly. I understand you're trying
16 to get Mr. Gaiman to agree that there are certain
17 aspects of a character that once you think of the
18 character, you think of certain stereotypes, cliches
19 about that particular character, and those would be just
20 part of the stereotype that we all have when we think of
21 that character.

22 MR. GRIMSLEY: As long as you understand the
23 concept, Your Honor, I don't need to continue with it
24 despite the fact that our writer seems to not understand
25 that concept.

NEIL GAIMAN - CROSS

1 MR. ARNTSEN: I object and move to strike that
2 last comment.

3 THE COURT: Granted.

4 THE WITNESS: Thank you.

5 BY MR. GRIMSLEY:

6 Q Let's bring the concept home. I mean when creating
7 a knight in armor, would there be any stock
8 characteristics of a knight-in-armor character?

9 MR. ARNTSEN: Object. Asked and answered.

10 THE COURT: Well, you can answer that. Are
11 there any stock characteristics of a knight in armor?

12 THE WITNESS: No, because you'd have -- it
13 depends who's in the armor, what they're doing. You
14 could have a -- I mean I could sit here and come up with
15 a dozen different kinds of knight in armor
16 characteristics. You could have, you know, even in the
17 Arthurian legends, there are hundreds of knights at the
18 round table and they're all very different. You can't
19 point to Gawain and say he's like Galahad or Lancelot
20 going mad. They're very different people. You have an
21 impulse for good for most of them, but then you have
22 knights in armor who were evil or bad or whose motives
23 are mixed up and conflicted.

24 BY MR. GRIMSLEY:

25 Q Are there any obvious choices in creating a knight
NEIL GAIMAN - CROSS

1 in armor as to costume armor? There's a list of
2 potential weapons?

3 A Even armory are potential weapons.

4 Q Right. I mean there's things like a battle ax and
5 a sword, a lance and shield, things like that?

6 A Sure.

7 Q Okay.

8 A There's sort of more clothing of the character,
9 yeah.

10 Q But that's more of the accouterment of the figure
11 rather than his character, is that true?

12 A Yes.

13 Q All right. In creating a knight in armor
14 character, regardless of whether the setting is Spawn or
15 something else, you would distinguish the characters
16 from other knights based on the personality; is that
17 true?

18 A I like to.

19 Q And their personal history?

20 A It would depend on the knight.

21 Q Their motivations?

22 A I think a character is a character. A character is
23 all of those things.

24 Q Right. I mean as a writer, you try to give a
25 character capital C character, right?

NEIL GAIMAN - CROSS

1 A No, I try to make people.

2 Q Okay. That's a very nice way to put it. And each
3 person is an individual collection of these elements,
4 correct?

5 A Yes.

6 Q Now Medieval Spawn, as described in the Spawn
7 Bible, is the son of a merchant. Do you recall reading
8 that?

9 A I -- you handed it to me, I looked at it and said I
10 don't know any of this stuff except the stuff at the
11 end. If you say so.

12 MR. ARNTSEN: Your Honor, it's in evidence and
13 I'll agree whatever it says.

14 THE COURT: You could just read it.

15 MR. GRIMSLEY: Sure. And are we agreeing that
16 that's the character that we're talking about?

17 MR. ARNTSEN: I don't understand that question.

18 THE COURT: Are you asking whether the Medieval
19 Spawn is what?

20 MR. GRIMSLEY: We just said that the
21 personality is part of the character and the story and
22 the history, and if this story -- are we stipulating
23 that the story that's in Exhibit 16 for Medieval Spawn
24 is the combination of all the elements for this?

25 MR. ARNTSEN: No, we're not. I believe
NEIL GAIMAN - CROSS

1 Mr. Gaiman testified in some detail that that was a back
2 story written after he wrote his story.

3 MR. GRIMSLEY: Okay. So whatever was written
4 here would be then further derivative of what
5 Mr. Gaiman -- I'm just trying to make sure I understand,
6 Your Honor. I think counsels' cross-chatter --

7 THE COURT: I don't think that's a question you
8 can ask Mr. Gaiman, but you can talk to counsel at the
9 next break.

10 MR. GRIMSLEY: Sure.

11 BY MR. GRIMSLEY:

12 Q And the Medieval Spawn that you co-created, was he
13 the son of a merchant?

14 A I didn't get to write about his family history.

15 Q Okay. Was he a knight?

16 A Yes.

17 Q Okay. Did he serve King Henry the II?

18 A He was a bad man who had died, become a good man,
19 and was out trying to do good.

20 Q And --

21 A Saving things and protecting people.

22 Q And he participated in the assassination of Thomas
23 Beckett?

24 A That -- I think I noticed the name Thomas Beckett
25 misspelled on that thing that you showed me. If -- I

NEIL GAIMAN - CROSS

1 have already explained that's -- I don't know, something
2 somebody made up and wrote down.

3 Q Okay. So as you co-created and the answer is just
4 no, he hadn't -- that wasn't part of the story?

5 A Because I co-created him, I guess that's
6 absolutely, theoretically, hypothetically possible.
7 What I created was that character in armor going out,
8 doing some saving.

9 Q And the fact that a Hellspawn on Earth would go
10 around rescuing damsels, that wasn't original to
11 Medieval Spawn, right?

12 A Are you asking if the idea of rescuing damsels was
13 original? No, it definitely isn't. That's something
14 that people have been doing for as long as there have
15 been people.

16 Q And when we first meet the original Spawn, that's
17 one of the first things he does.

18 A Absolutely. He's rescuing people.

19 Q Right. Okay. So what -- the Medieval Spawn that
20 you created, what was his motivation for making a deal
21 with the devil?

22 A We never found out in the issue that I wrote. I
23 always hoped that they'd come up with something good
24 after I left, that Todd would go in and make up a good
25 back story for him.

NEIL GAIMAN - CROSS

1 Q Okay. And if the character had --

2 A I mean if you're writing a comic, you create
3 characters. You don't always create their entire life
4 story. Bruce Wayne as Batman wasn't all there in
5 Detective Comics 27. It comes in a bit at a time, but
6 it's still the Batman created in Batman Comic 27.

7 Q And the Medieval Spawn that you have a co-ownership
8 of, does that include the elements that were added later
9 by Mr. McFarlane and others to fill out that back story?

10 A I -- I'm not a lawyer. I don't know.

11 Q Okay. As a layman, do you have a view?

12 MR. ARNTSEN: Object. Calls for a legal
13 conclusion.

14 THE COURT: Sustained.

15 MR. ARNTSEN: If he does, it's not relevant.

16 BY MR. GRIMSLEY:

17 Q Now the Medieval Spawn that you wrote, you wrote
18 his dialogue, correct?

19 A It was dialogue and thumbnails.

20 Q And I mean you wrote all the words, but I'm just
21 asking you wrote his dialogue?

22 A Oh, yes.

23 Q So you wrote the way he speaks.

24 A Yes.

25 Q And he speaks in a fairly stilted, maybe old
NEIL GAIMAN - CROSS

1 fashioned manner?

2 A He speaks in a sort of slightly old fashioned
3 manner, yes.

4 Q He uses words like *sweet maiden*?

5 A He does.

6 Q Says things like *I know not what I am* rather than *I*
7 *don't know what I am*?

8 A He does.

9 Q And his speech is consistent in that manner through
10 all of his appearances, correct?

11 A *All of his appearances* meaning every panel he's in
12 in that comic?

13 Q Yes.

14 A Yes. He doesn't suddenly start talking like a Todd
15 or something.

16 Q Or you.

17 A Or me.

18 Q Now with Angela, do her motivations and her history
19 separate her from other female warrior angel characters?

20 A They're what make her Angela, yes.

21 Q Okay.

22 A As opposed to Quan Yin or Domina or whatever.
23 Sure.

24 Q Okay. So could other warrior angels have
25 superficial similarities to Angela and not be derived

NEIL GAIMAN - CROSS

1 from the characters you have a co-ownership in?

2 MR. ARNTSEN: Objection. Calls for a legal
3 conclusion.

4 THE COURT: Sustained.

5 BY MR. GRIMSLEY:

6 Q Now Angela is, I think it says at one point,
7 100,000 years old?

8 A Yes.

9 Q One of the few angels to be allowed to hunt
10 Hellspawn?

11 A Yes.

12 Q And she's a huntress at heart?

13 A It's recreational, but yes.

14 Q Okay. Ultimately she fails to kill the original
15 Spawn when they have an encounter?

16 A The original, you mean Spawn --

17 Q Al Simmons's Spawn.

18 A She fails to kill him, yes.

19 Q The Spawn that Todd created that started the
20 series.

21 A Yeah.

22 Q And she is put on -- Angela is put on trial for
23 treason?

24 A Yes.

25 Q And the Al Simmons's Spawn helps her to escape?
NEIL GAIMAN - CROSS

1 A Yes.

2 Q And I think you testified earlier she leaves
3 Heaven's army and goes freelance?

4 A Yes.

5 Q Okay. And that's all part of her character and
6 background of the story, correct?

7 A That's the plot that I wrote, yes.

8 Q Now how long have you been in the comic book
9 industry?

10 A I think I wrote my first comic in 1985/'86
11 somewhere.

12 Q Always as a writer?

13 A Most of it was a writer. Occasionally I've drawn
14 and it's been published.

15 Q Have you collaborated with other writers on a
16 series?

17 A Yes.

18 Q Any names that come to mind when you answer that?

19 A I did a book called *The Children's Crusade* which I
20 book ended, wrote sort of book ends, and worked with a
21 number of writers Jamie DeLillo, Alisa Kwitney, Rachel
22 Pollack, Nancy Collins and many others.

23 Q Okay.

24 A And of course when you're just writing -- I did
25 most recently, my most recent comics work, was a

NEIL GAIMAN - CROSS

1 two-parter last year where I got to kill Batman called
2 *Whatever Happened to the Cape Crusader*, which was the
3 last Batman issue of Detective Comics and Batman Comics,
4 and on that level, you're kind of collaborating with
5 seventy years of people who have written Batman and the
6 people who are writing it now.

7 Q Let's take any one of those writers; for instance,
8 Ms. Pollack you mentioned.

9 A Um-hmm.

10 Q Are you saying she couldn't create an angel without
11 it being derivative of Angela?

12 MR. ARNTSEN: Object. Calls for a legal
13 conclusion.

14 THE COURT: Sustained.

15 BY MR. GRIMSLEY:

16 Q Well, let's -- do you agree that other authors
17 could create female angel warrior characters without
18 having to use the character that you co-created?

19 MR. ARNTSEN: Object. Calls -- if it's
20 relevant to anything, it calls for a legal conclusion.

21 THE COURT: I suppose. Sustained.

22 BY MR. GRIMSLEY:

23 Q Do you agree another writer could create a Spawn
24 from medieval times without having to rely on the Spawn
25 that you created in Issue 9?

NEIL GAIMAN - CROSS

1 MR. ARNTSEN: Same objection. Irrelevant and
2 calls for a legal conclusion.

3 THE COURT: Sustained.

4 BY MR. GRIMSLEY:

5 Q Have you ever seen -- have you seen the description
6 of Tiffany in the Spawn Bible?

7 A I think it was up on that screen, but I couldn't
8 read the words.

9 Q Okay. And you hadn't seen it before then?

10 A If I saw it as part of a big brief, I would have
11 flipped through it.

12 Q By the way, have you read the Dark Ages series of
13 comics?

14 A I read some of it.

15 Q Okay.

16 A I picked a few up as they were coming out, and
17 again flipped through it yesterday on the way up.

18 Q You flipped through. Have you ever sat down and
19 read all 28 issues?

20 A No.

21 Q This is the description of Tiffany from Exhibit 16.
22 And I'll let counsel correct me when I'm wrong rather
23 than read it per se. But the gist of it is Tiffany
24 dislikes Angela, right?

25 A Yes.

NEIL GAIMAN - CROSS

1 Q And can you tell from this image -- I mean Tiffany
2 has sort of on her leg, on her right leg, it would be on
3 our left-hand side, what appears to be like a little
4 ammunition belt?

5 A I thought it was chocolates, but it could be
6 ammunition. It could be anything.

7 Q Well, Tiffany uses guns, right?

8 A It's definitely a belt of some kind.

9 Q Well, is it correct that Tiffany uses guns?

10 A I haven't read every Tiffany appearance.

11 Q Well, I thought you said Tiffany was part of the
12 host of angels that you created.

13 A Yes.

14 Q Did you create an angel in your host of angels who
15 uses guns?

16 A I'm sure many of them did. I said there were
17 300,000 of them.

18 Q Did you ever write anything or have any drawings
19 where the angel used a gun?

20 A No.

21 Q No. Okay. So from Exhibit 8, we have this picture
22 of Tiffany. Just so we're clear, here do you see the
23 gun in her hand?

24 A I don't believe somebody becomes less derivative of
25 another character if they pick up a gun. Batman is

NEIL GAIMAN - CROSS

1 still Batman if he's holding a gun. But yes, I see the
2 gun.

3 MR. GRIMSLEY: Your Honor, if I may, I've had
4 several objections and instructions when I've asked --

5 THE COURT: Disregard this.

6 MR. GRIMSLEY: -- this witness what would be
7 derivative of something else. He's now volunteering and
8 I believe it's opened the door to the entire line of
9 questions that was objected to and sustained if he's
10 going to offer that sort of testimony.

11 THE COURT: I'll disregard the answer, but I
12 don't believe that he's opened the door to the other
13 questions.

14 BY MR. GRIMSLEY:

15 Q Do you see that Tiffany -- this angel character
16 uses a gun?

17 A She is definitely holding something. If you bring
18 it over here and I can see what it is properly, I can
19 probably tell you if it's a gun or not. Up there
20 honestly --

21 Q No, I appreciate that. It's hard on the screen.

22 A Yeah, it's a gun.

23 Q And Tiffany has some sort of wing on her back; it
24 looks like blades, correct?

25 A Yes.

NEIL GAIMAN - CROSS

1 Q She doesn't have the headpiece that Angela wore?

2 A No.

3 Q Now both of these characters, both Tiffany and
4 Angela, are, I guess to put it mildly, scantily clad?

5 A Yes.

6 Q Is it common in modern comic books to portray women
7 scantily clad?

8 A Not the ones that I write.

9 Q Okay. But putting aside the handful that you
10 write, is it fairly common?

11 A No.

12 Q No?

13 A I was the editor this year of Year's Best American
14 Comics and I read an awful lot of comics and most of
15 them had fully clad women. I will accept there may be
16 some comics out there with scantily clad women, but no,
17 I don't believe it's the norm.

18 Q Well, when we're using the adjective *scantily clad*,
19 do you consider Wonder Woman to be full clothed or
20 scantily clad?

21 A I haven't read a Wonder Woman comic in ten years.
22 I have no idea what she's wearing currently. Throughout
23 her history, it has moved backwards and forwards. At
24 one point in the 60s and 70s she was in a trouser suit.
25 The costumes vary.

NEIL GAIMAN - CROSS

1 Q Let's just put up an image from Exhibit 38. A
2 Wonder Woman at the bottom. Do you recognize that?

3 A Wonder Woman.

4 Q And would you agree that she is relatively scantily
5 clad?

6 A It's a skin tight variant of the Wonder Woman
7 costume. Normally has -- the last time I saw it, it
8 definitely had a little dress or some of it went down
9 further. But it seems to have crept further up her
10 thigh.

11 Q Okay. The lines keep changing, don't they? By the
12 way, Exhibit 38 is a publication called *Previews* from
13 Diamond Distribution. Are you familiar with that
14 publication?

15 A Yes.

16 Q And can you explain to the Court what *Previews*
17 would be?

18 A Sure. There's -- well, the distribution system of
19 comics that gives you the solicitation process that I
20 was talking about earlier, those advanced solicitations
21 from all the different comic companies, big and little,
22 get put together by Diamond, who are one of the
23 distributors, these days pretty much the only
24 distributor, and that volume goes out to comic stores.
25 So originally for retailers and now as much for
NEIL GAIMAN - CROSS

1 customers as retailers.

2 Q Let me just flip through a few pages to make sure
3 we understand each other. The women portrayed on this
4 page, would you say they're scantily clad or fully clad?

5 MR. ARNTSEN: Your Honor, I object on relevance
6 grounds.

7 THE COURT: Overruled.

8 THE WITNESS: Let's see, I can't see one, two
9 -- of the ones on here, one of them appears to be
10 wearing fishnet bondage gear; one of them looks like
11 Power Girl, who is a Superman knockoff in a cape; and
12 one of them is a weird manga thing. I'm not even sure
13 if she's -- what she's wearing. Are they fully dressed?
14 No, they're wearing spandex.

15 BY MR. GRIMSLEY:

16 Q I'll flip the page. There's another comic book
17 character in bikini, right?

18 A Could be a bikini, could be a shirt tied up
19 underneath.

20 Q Oh. Sure. Okay.

21 A They are scantily clad.

22 Q Another character with kind of a high thigh line
23 and --

24 A With the guy holding the thing up.

25 Q Revealing.

NEIL GAIMAN - CROSS

1 A He's got a very, very high thigh line, he's just a
2 little crotch, and he's holding a rock in the air and
3 he's fighting Thor. And there's a lady in front of him
4 not wearing anything, too.

5 Q Yeah, another bikini?

6 A That's a swimsuit illustration and she's wearing a
7 swimsuit on the cover.

8 Q So if we flip through -- I mean the Judge can do
9 this, we don't have to do it now -- but it's -- would
10 you agree that there would be a fair number of women who
11 are portrayed as scantily clad in the comic books?

12 THE COURT: What is that exhibit number,
13 Mr. Grimsley?

14 MR. GRIMSLEY: That is Number 38.

15 THE WITNESS: Again, I can absolutely, utterly,
16 with my hand on my heart testify that the ladies in
17 those pictures in those ads that you showed me weren't
18 wearing very much, nor were the men. Beyond that, I
19 think generalizing the comics is deeply problematic.

20 BY MR. GRIMSLEY:

21 Q Now while we're talking about Angela and Tiffany,
22 let me bring this back real quick. One last thing. You
23 said Angela has this big flowing red hair, is that
24 correct?

25 A Um-hmm.

NEIL GAIMAN - CROSS

1 Q And Domina has, at least as portrayed in the comic
2 book, more spikey, sort of stand-uppish hair I think you
3 said?

4 A I think I said Tiffany had --

5 Q I'm sorry?

6 A -- the spikish stand-uppish hair.

7 Q Tiffany has the shorter stand-uppish hair?

8 A Yeah, or at least in the pictures I was shown.

9 Obviously I have not seen every Tiffany appearance.

10 Q Okay. Now the character Domina is not described in
11 the Spawn Bible, is that correct?

12 MR. ARNTSEN: I'll stipulate that it isn't.

13 A Okay, it's not.

14 Q In the comic that you were shown earlier in which
15 Domina appeared, Domina and Angela have a bit of a
16 run-in?

17 A Um-hmm.

18 Q Okay. Angela stops Domina from heading off to do
19 war, from starting Armageddon?

20 A I think that's right.

21 Q Okay. And Domina, her headdress isn't the same
22 wings as Angela?

23 A No. There are lots of different headdresses.

24 Q When you use the term *Medieval Spawn*, do you think
25 of that as referring to a time period?

NEIL GAIMAN - CROSS

1 A No.

2 Q Okay.

3 MR. ARNTSEN: Your Honor, I apologize, Alex,
4 for interrupting. When our hearing was set to start at
5 eight o'clock, Mr. Gaiman made a reservation on a plane
6 flight that's leaving Madison at two, which I thought
7 would be fine being the first witness. I'm not sure how
8 long you think you're going to be, Alex.

9 MR. GRIMSLEY: Let me see if I can wrap it up
10 in 45 minutes with him, if we can take a late lunch.

11 THE COURT: All right.

12 MR. ARNTSEN: Thank you. I appreciate that.

13 BY MR. GRIMSLEY:

14 Q What period in time is Medieval Spawn from?

15 A 800 years ago.

16 Q 800 years ago.

17 A 12th century.

18 Q Okay.

19 A Obviously somewhere between 1100 and 1200, maybe
20 1250 if you wanted to push it.

21 Q And that's the period when he's killed, correct?

22 A Yeah. 800 years ago. I don't know that it was
23 exactly 800, whether I was thinking 800 to the day or
24 whether it was just generalization.

25 Q But that was the period when he was killed?

NEIL GAIMAN - CROSS

1 A Yes.

2 Q Was there anything in Spawn 9 that told us when he
3 lived?

4 A I don't quite understand your question.
5 Approximate -- I would have thought approximately the
6 same time.

7 Q Okay. But one of the mechanisms in the story is
8 that the Hellspawn have returned?

9 A Comes back a few years later.

10 Q But so there is nothing in Issue 9 that told us
11 when this character lived, the issue that you wrote?

12 A No. You know that this event happens 800 years
13 ago.

14 Q And there was nothing in Issue 9 that told us what
15 country this character lived in?

16 A I assumed it was England, but I don't think we ever
17 even locked that down, that part.

18 Q So there was nothing saying whether he was English,
19 French, German, whatever.

20 A He does speak English.

21 Q But it's an English comic book, correct?

22 A Yeah, but I'm the kind of person who actually, if
23 it was in France, might well have written in French just
24 to make kids go and look up French words in
25 dictionaries. I did that recently with some Latin stuff

NEIL GAIMAN - CROSS

1 in a comic.

2 Q Okay. So if a Medieval Spawn spoke French, would
3 that be different than the character you created?

4 A Actually a Medieval Spawn, thinking about it,
5 probably would have been speaking French.

6 Q Okay.

7 A Because Saxon would have been -- I'm sorry.

8 Q Okay. But your character spoke in English.

9 A His dialogue was written in English.

10 Q So if his dialogue was written in French, would
11 that be a different character than the one you created?

12 A I've seen issues of Spawn 9 translated into French
13 and Japanese and Spanish and it's the same character.

14 Q If there was a medieval -- a Spawn from medieval
15 times who spoke in rap, would that be different than the
16 character you created?

17 A One would assume he was under some kind of horrible
18 spell.

19 Q Is that a yes?

20 A That was -- I think it's a silly question, with all
21 due respect.

22 MR. ARNTSEN: Your Honor, again, to me if these
23 are relevant questions, they're calling for legal
24 conclusions.

25 THE COURT: Sustained.
NEIL GAIMAN - CROSS

1 MR. GRIMSLEY: Your Honor, if I can proffer,
2 I'm simply trying to get one of the co-creators to
3 establish what it is he created. I don't think that
4 calls for a legal conclusion. I'm asking a creator to
5 describe what are the limits of this character that he
6 created.

7 MR. ARNTSEN: What he created is in Spawn 9.
8 That's the comic. That's what's there.

9 THE COURT: I think that's what we're stuck
10 with.

11 MR. GRIMSLEY: Very well.

12 BY MR. GRIMSLEY:

13 Q So you said earlier that Medieval Spawn always
14 speaks in this formal sort of medieval fashion in Spawn
15 9, correct?

16 A In Spawn 9.

17 Q Yes. And as we just all agreed, that's what we're
18 talking about, right? Have you read through Dark Ages
19 to see how he speaks?

20 A I read some of it.

21 Q Let's pull a couple of pages. This is from Exhibit
22 12. Pardon me. I have the wrong binder. Giving you
23 Exhibit 22. This may be the very first line for the
24 Dark Ages Spawn character that we see in any of these
25 issues and he simply says "What am I," right? Do you

NEIL GAIMAN - CROSS

1 see that?

2 A Yeah.

3 Q Okay. And is that line particularly medieval --

4 A Yeah.

5 Q -- speech?

6 A No, definitely. That's a simple English
7 declarative sentence. It would have been the same going
8 back all the way. That's nice.

9 Q Okay. So a modern person would not say *what am I*?

10 A The Bible, the King James Bible, which was written
11 a long time ago, is filled with beautiful simple English
12 declarative sentences that we would say now and that
13 they said then. It's -- absolutely. It's a glorious
14 little sentence.

15 Q And in your mind that's speaking medieval?

16 A In my mind that's a good clear English declarative
17 sentence.

18 Q And is that speaking medieval?

19 A There is no such thing as speaking medieval.
20 Medieval is a time period. It goes approximately a
21 thousand years, maybe 1500 years, but definitely a
22 thousand years. It's not a language.

23 Q And the character Medieval Spawn, rather than
24 saying *what am I*, said something to the effect of I
25 think *I know not what I am*?

NEIL GAIMAN - CROSS

1 A Um-hmm.

2 Q I mean --

3 A No, it's a very different sentence. He is
4 explaining something. That would be the equivalent of *I*
5 *don't know what I am*.

6 Q Okay. How about the simple phrase *Go to Hell, Old*
7 *Man*. Would that be medieval or more modern?

8 A Again, short and simple. Go to Hell is an
9 instruction. It's -- it would go all the way back.

10 Q So a short -- the way that you view the way
11 Medieval Spawn spoke is really in just short declarative
12 sentences; there's nothing else distinctive about his
13 speech?

14 A No. I had him talking to a young lady in fair
15 knightly terms. That's something that a character, you
16 assume, has learned a little knightlihood and he's
17 talking to a young lady and he's using his fancy words.
18 It's -- there's a difference between demotic speak and
19 the fancy stuff and the stuff that you'd use if you were
20 being knightly. If you're being courtly, I assume that
21 if you're talking to your king, you don't talk the same
22 way that you talk to your dog.

23 Q Okay. And Medieval Spawn speaks in that way
24 throughout all the frames in which he has lines?

25 A Actually if you have the comic --
NEIL GAIMAN - CROSS

1 Q I can retrieve it for you.

2 MR. ARNTSEN: Your Honor, I stipulate that it
3 says what it says. I'm not sure what this witness's
4 testimony will add to it. The Court can read it, the
5 Court can read it and --

6 THE COURT: Mr. Grimsley can continue if he
7 wants to. You can produce the comic.

8 BY MR. GRIMSLEY:

9 Q You wanted to reference it?

10 A Sure.

11 Q You may.

12 A Thank you. So the last thing that Spawn says here
13 is *I don't understand*. It's a nice simple English
14 declarative sentence. It's not harsh. It's not clever.
15 *I no longer have a name*. And so on and so forth. It's
16 -- absolutely. How you would, as a knight, speak to a
17 maiden. It's not necessarily how you'd speak to the
18 person killing you, which is why the language changes a
19 little bit.

20 Q Do you know one way or the other whether Dark Ages
21 Spawn speaks consistently in the same manner as Medieval
22 Spawn?

23 A Looking through the comics, I thought Brian was
24 doing a fairly creditable job of trying to give the
25 feeling that this was happening in the old days.

NEIL GAIMAN - CROSS

1 Q Now it's your contention that Dark Ages Spawn is
2 derivative of Medieval Spawn?

3 A No. It's my contention that Dark Ages Spawn is
4 modic (ph) derivative of Spawn and is Medieval Spawn.
5 It's the same thing.

6 Q But it is Medieval Spawn.

7 A Sure.

8 Q So then your contention is that Brian Holguin,
9 sitting here, the writer on Dark Ages, didn't create a
10 new character?

11 A Yes.

12 Q Okay. He simply stole your character and put a new
13 name on it.

14 A No. It's the same -- I assume it's the same
15 character. It's Spawn in the 12th century as a knight
16 in armor.

17 Q Okay. And you believe you have a copyright on that
18 concept, Spawn in the 12th century as a knight in armor?

19 MR. ARNTSEN: Object. Calls for a legal
20 conclusion?

21 THE COURT: Sustained.

22 BY MR. GRIMSLEY:

23 Q So regardless of the back story and the history,
24 you believe that any two Spawns who are knights in armor
25 in the 12th century are the same character?

NEIL GAIMAN - CROSS

1 MR. ARNTSEN: Object. It's irrelevant. It's
2 leading.

3 THE COURT: Sustained.

4 BY MR. GRIMSLEY:

5 Q Did the Medieval Spawn that you created ever go on
6 one of the crusades?

7 A I have no idea.

8 Q As you created him, there was nothing to indicate
9 to us that the Medieval Spawn had ever gone on a
10 crusade?

11 A Absolutely not. I didn't -- there were eight
12 pages.

13 Q There was nothing in what you created of Medieval
14 Spawn to say that Medieval Spawn had ever been a Lord
15 over a village or territory?

16 A No.

17 Q And there's nothing in what you created in Medieval
18 Spawn to suggest that Medieval Spawn had had an affair
19 with his sister's handmaiden?

20 A Other than him describing himself as a bad man
21 while he was alive, no.

22 Q And there's nothing that you created in Medieval
23 Spawn that would lead us to believe that Medieval Spawn
24 ever came to realize what he is prior to being killed?

25 A Or nothing that he was definitely going to explain
NEIL GAIMAN - CROSS

1 to a young lady that he'd just met.

2 Q The Medieval Spawn toy, do you recall if that was
3 popular at all?

4 A From what I remember, it must have been popular
5 because he did a lot more.

6 Q Okay. You've been in the comic industry for
7 awhile. If you had a popular character and you're
8 starting a new series, would you do something to
9 reference the popular character based on the new series
10 based on the popular character?

11 A No, not necessarily.

12 Q Okay. So if you were writing the solicitation for
13 the issue, you wouldn't say, you know, here is a new
14 series based on this popular character?

15 A That's a bit hypothetical I'm afraid.

16 Q Okay. You don't know one way or the other what you
17 would do in marketing a new series like that?

18 A I'm a writer, not a marketer.

19 Q Okay. But you write the solicitation, correct?

20 A Normally, no.

21 Q Okay.

22 A No. I wrote the ones for Spawn 9 all those years
23 ago because Todd asked me to and they had to put
24 something out. But no, I don't think I've written a
25 solicitation since.

NEIL GAIMAN - CROSS

1 Q Let me hand you Exhibit 42. This is another one of
2 the toys and ask you if you recognize that character.

3 A It says Lord Covenant. And no.

4 Q You don't recognize that character?

5 A No.

6 Q Okay. That doesn't appear to be a character that
7 you created?

8 A I wouldn't have thought so.

9 MR. GRIMSLEY: Okay. Thank you. Nothing
10 further.

11 THE COURT: That was a quick 45 minutes.
12 Mr. Arntsen.

13 MR. ARNTSEN: Nothing further, Your Honor.

14 THE COURT: All right. We'll take a lunch
15 break until one o'clock.

16 MR. ARNTSEN: Your Honor, just to be clear, is
17 it okay if Mr. Gaiman could be excused since he does
18 have his flight?

19 THE COURT: He's excused, yes.

20 (Witness excused)

21 (Noon recess at 12:04 p.m.)
22
23
24
25

NEIL GAIMAN - CROSS

1 I, LYNETTE SWENSON, Certified Realtime and Merit
2 Reporter in and for the State of Wisconsin, certify that
3 the foregoing is a true and accurate record of the
4 proceedings held on the 14th day of June 2010 before the
5 Honorable Barbara B. Crabb, Judge for the Western
6 District of Wisconsin, in my presence and reduced to
7 writing in accordance with my stenographic notes made at
8 said time and place.
9 Dated this 17th day of June 2010.

10
11
12
13 /s/_____
14 Lynette Swenson, CRR, RMR,
15 RPR, CBC
16 Federal Court Reporter
17
18
19
20

21 The foregoing certification of this transcript does not
22 apply to any reproduction of the same by any means
23 unless under the direct control and/or direction of the
24 certifying reporter.
25